

# Wisconsin Administrative Register

No. 607



Publication Date: July 31, 2006

Effective Date: August 1, 2006



Revisor of Statutes Bureau  
<http://www.legis.state.wi.us/rsb/code.htm>

# The 2003 – 04 Wisconsin Statutes and Annotations are now available in bound volumes or on the *WisLaw*<sup>®</sup> CD-ROM

## Bound Volumes:

Prices for the 2003 – 04 Wisconsin Statutes and Annotations bound volumes are detailed below. Any sales tax due must be added to these prices:

Hard Cover	Hard Cover	Soft Cover	Soft Cover
<u>With Postage</u>	<u>Without Postage</u>	<u>With Postage</u>	<u>Without Postage</u>
<b>\$152.00</b>	<b>\$146.00</b>	<b>\$130.00</b>	<b>\$124.00</b>

Send orders to the Document Sales and Distribution Section at the address below or call (608) 266–3358. Unless exempt by law, all sales are subject to 5% state sales tax and, where applicable, 0.5% county sales tax and 0.1% stadium tax. Prepayment is required for all orders. Payments by check, money order, or credit card should be made payable to WI Department of Administration. Credit card orders using either VISA or MasterCard may be placed by calling (800) 362–7253 or (608) 264–9419.

## *WisLaw*<sup>®</sup> CD-ROM:

Up-to-date *WisLaw*<sup>®</sup> CD-ROMs are released quarterly by the Revisor of Statutes Bureau. *WisLaw*<sup>®</sup> contains:

- Wisconsin Statutes and Annotations with Index
- Table of Cross-References and Table of Sections Affected by Acts
- Wisconsin Administrative Code with Index, Administrative Register, and Emergency Rules
- Executive Orders
- Wisconsin Acts with Index
- Supreme Court Rules and Internal Operating Procedures
- Recent Opinions of the Attorney General with Index
- Wisconsin Constitution with Annotations and Index
- U.S. Constitution
- Wisconsin Town Law Forms
- Wisconsin Code of Military Justice

All of the above *WisLaw*<sup>®</sup> Infobases are substantially integrated with hypertext links. The statutes now feature thousands of links between administrative rules and their authorizing statutes. State agencies are using *WisLaw*<sup>®</sup> for their legal research. *WisLaw*<sup>®</sup> is distributed by the Document Sales and Distribution Section to state agencies that submit a complimentary annual subscription form.

*WisLaw*<sup>®</sup> is available only by annual subscription. *WisLaw*<sup>®</sup> End-user license and subscription order forms are available at Document Sales or at <http://www.legis.state.wi.us/rsb>. CDs will be delivered only upon receipt of a signed license and subscription form and full payment. An annual subscription plus a license for no more than one simultaneous user costs \$99. Licenses for no more than 4 simultaneous users or for no more than 10 simultaneous users cost \$149 or \$199, respectively. Shipping is included. Unless exempt by law, all sales are subject to 5% state sales tax and, where applicable, 0.5% county sales tax and 0.1% Wisconsin stadium sales tax.

Orders by FAX will **not** be accepted; call (608) 266–3358 or TTY (608) 264–8499 or write to:

The State of Wisconsin  
Department of Administration  
Bureau of Document Services  
Document Sales and Distribution Section  
P.O. Box 7840  
Madison, WI 53707–7840

---



---

## Table of contents

---



---

<b>Emergency rules now in effect.</b>	<b>Pages 5 to 11</b>
Administration:	Rules relating to cost benefit analyses of contractual services.
Agriculture, Trade and Consumer Protection:	Rules relating to a poultry flock certification program.  Rules affecting <b>ch. ATCP 136</b> , relating to mobile air conditioners; reclaiming or recycling refrigerant. [ <b>First Appearance</b> ]
Commerce:	<u>Commercial Buildings, Chs. Comm 61 to 65</u> Rules relating to automatic fire suppression for student housing facilities serving colleges and universities.  <u>Financial Resources for Businesses and Communities, Chs. Comm 105 to 131</u> Rules relating to diesel truck idling reduction grants.
Corrections:	Rules relating to a sex offender registration fee.
Elections Board:	Rules relating to the use of funds in a federal campaign committee that has been converted to a state campaign committee.
Emergency Management:	Rules relating to disaster assistance for local governments.
Health and Family Services:	Rules relating to licensing emergency medical technicians and affecting small businesses.
Natural Resources:	<u>Fish, Game, etc., Chs. NR 1—</u> Rules relating to commercial fishing for lake trout in Lake Superior.  Rules relating to the issuance of turkey hunting permits.  Rules relating to the forestry research and development grant program.  Rules relating to regulation of firewood entering and exiting department lands and affecting small businesses.  <u>Environmental Protection—Water Regulation, Chs. NR 300—</u> Rules relating to regulation of piers, wharves, boat shelters, boat hoists, boat lifts and swim rafts in navigable waterways.  Rules relating to shore erosion control on rivers and streams.
Regulation and Licensing:	Rules relating to a code of conduct and renewal requirements for substance abuse professionals.

Transportation:	Rules relating to contractual service procurement.
Workforce Development:	<u>Labor Standards, Chs. DWD 270–279</u> Rules relating to overtime pay for employees performing companionship services.
<b>Scope statements.</b>	<b>Pages 12 to 15</b>
Commerce:	Rules affecting chs. Comm 81–87, relating to POWTS program administrative functions, POWTS soil testing, design, construction, inspection and maintenance.
Marriage and Family Therapy, Professional Counseling and Social Work Examining Board, Professional Counselor Section:	Rules affecting ch. MPSW 11, relating to requirements for obtaining a training certificate for professional counselors, including a provision that an applicant have an offer of full–time employment.  Rules affecting ch. MPSW 17, relating to current requirements for obtaining a training certificate for marriage and family therapists, including a provision that an applicant have an offer of full–time employment.
Natural Resources:	Rules affecting ch. NR 809, relating to public drinking water systems using surface water or groundwater under the direct influence of surface water (GWUDI) and serve fewer than ten thousand (10,000) people.
Occupational Therapists Affiliated Credentialing Board:	Rules affecting waiving the continuing education requirements when a licensee is unable to complete them due to a hardship and eliminating the need for first time licensees to meet CE requirements in the first cycle of licensure.
Optometry Examining Board:	Rules affecting the regulation of optometry; authority and definitions; examination approval; delegation; licensure by endorsement; continuing education; conduct; usage of therapeutic pharmaceutical agents (TPAs) and diagnostic pharmaceutical agents (DPAs); and certificate of registration.
Regulation and Licensing:	Rules affecting chs. RL 50 to 54, relating to the newly created statutory requirements for the transfer of regulatory authority of cemeteries from the Department of Regulation and Licensing to the Cemetery Board and the creation of licensing requirements for cemeteries.
<b>Submittal of rules to legislative council clearinghouse.</b>	<b>Pages 16 to 17</b>
Administration:	Rules affecting ch. Adm 10, relating to uniform procedures for determining whether services are appropriate for contracting under the State procurement system.
Regulation and Licensing:	Rules relating to the issuance and renewal of licenses, the issuance of temporary permits, standards of practice and grounds for discipline of licensed midwives.
Revenue:	Rules affecting ch. Tax 1, relating to the discretion that the department will follow in the enforcement of rules and guidelines as they apply to a small business.
Transportation:	Rules affecting ch. Trans 105, relating to licensing of driver schools and instructors.

Workforce Development: Rules affecting ch. DWD 59, relating to grants supporting community child care initiatives.

**Rule-making notices.**

**Pages 18 to 41**

Administration: Hearing to consider rules affecting ch. Adm 10, relating to cost-benefit analyses of contractual services.

Agriculture, Trade and Consumer Protection: Hearings to consider rules affecting ch. ATCP 156, relating to seed potato certification and grading.

Hearing to consider an emergency rule relating to mobile air conditioner refrigerant and repairs.

Emergency Management: Hearing to consider emergency and permanent rules affecting ch. WEM 7, relating to the application process and criteria for determining eligibility for payments to local units of government for damages and costs incurred for major catastrophes.

Hearings to consider rules affecting ch. WEM 8, relating to the establishment of standards for the adoption of the Mutual Aid Box Alarm System.

Regulation and Licensing: Hearing to consider rules affecting chs. RL 180 to 183, relating to the issuance and renewal of licenses, the issuance of temporary permits, standards of practice and grounds for discipline of licensed midwives.

Revenue: Hearing to consider rules affecting ch. Tax 2, relating to the computation of the apportionment fraction of multistate businesses.

Hearing to consider rules relating to the discretion that the department will follow in the enforcement of rules and guidelines as they apply to a small business.

Transportation: Hearing to consider rules affecting ch. Trans 105, relating to licensing of driver schools and instructors.

Workforce Development: Hearing to consider rules affecting ch. DWD 59, relating to grants supporting community child care initiatives.

**Submittal of proposed rules to the legislature.**

**Page 42**

Agriculture, Trade and Consumer Protection: Rules affecting chs. ATCP 32 and 33, relating to fertilizer and pesticide bulk storage.

Barbering and Cosmetology Examining Board: Rules affecting chs. BC 1 to 6 and 8, relating to definitions, microdermabrasion, chemical skin peels, managers, ear piercing, waxing, nail enhancement, licensing requirements and reinstatement of license.

Transportation: Rules affecting ch. Trans 102, relating to CDL exemptions.

**Rule orders filed with the revisor of statutes bureau.**

**Page 43**

Commerce: CR 05-081 – An order affecting ch. Comm 48, relating to petroleum products.

Natural Resources: CR 06-013 – An order affecting ch. NR 10, relating to deer hunting as it relates to the control and eradication of chronic wasting disease.

Transportation: CR 06-036 – An order affecting ch. Trans 510, relating to the Transportation Facilities Economic Assistance and Development (TEA) Program.

CR 06-041 – An order affecting ch. Trans 103, relating to habitual traffic offenders.

**Rules published with this register and final regulatory flexibility analyses. Pages 44 to 45**

**Sections affected by rule revisions and corrections. Pages 46 to 47**

**Executive orders. Page 48**

---



---

## Emergency rules now in effect

---



---

*Under s. 227.24, Stats., state agencies may promulgate rules without complying with the usual rule-making procedures. Using this special procedure to issue emergency rules, an agency must find that either the preservation of the public peace, health, safety or welfare necessitates its action in bypassing normal rule-making procedures.*

*Emergency rules are published in the official state newspaper, which is currently the Wisconsin State Journal. Emergency rules are in effect for 150 days and can be extended up to an additional 120 days with no single extension to exceed 60 days.*

*Occasionally the Legislature grants emergency rule authority to an agency with a longer effective period than 150 days or allows an agency to adopt an emergency rule without requiring a finding of emergency.*

*Extension of the effective period of an emergency rule is granted at the discretion of the Joint Committee for Review of Administrative Rules under s. 227.24 (2), Stats.*

*Notice of all emergency rules which are in effect must be printed in the Wisconsin Administrative Register. This notice will contain a brief description of the emergency rule, the agency finding of emergency or a statement of exemption from a finding of emergency, date of publication, the effective and expiration dates, any extension of the effective period of the emergency rule and information regarding public hearings on the emergency rule.*

*Copies of emergency rule orders can be obtained from the promulgating agency. The text of current emergency rules can be viewed at [www.legis.state.wi.us/rsb/code](http://www.legis.state.wi.us/rsb/code).*

---

### Administration

Rules adopted revising **ch. Adm 10**, relating to cost benefit analyses of contractual services.

#### Exemption from Finding of Emergency

Section 8(2) of 2005 Wisconsin Act 89 requires the Department of Administration to promulgate rules required under ss. 16.004 (1), 16.705 (2) and 227.11 Stats., by using the emergency rulemaking procedure under s. 227.24, Stats., except that the department is not required to provide evidence that the emergency rule is necessary for the preservation of public peace, health, safety or welfare and is not required to provide a finding of emergency.

#### Plain language analysis

The department intends to promulgate a rule as required by Act 89 to require a cost-benefit analysis to be completed for each bid or request for proposal to compare the cost of contracting for services versus providing the services with state employees.

Currently, all state agencies and UW System campuses may contract for services between \$25,000 and \$200,000 if they can show that the services can be performed more economically or efficiently by such a contract than by state employees. Currently, if the contractual services would be greater than \$200,000, the contracting agency must complete a more rigorous and detailed cost/benefit analysis to demonstrate that the services can be performed more economically or efficiently by such a contract than by state employees. This more rigorous and detailed analysis includes total cost, quality and nature of services required, specialized skills, time factors, risk factors and legal barriers. Act 89

requires agencies to conduct uniform cost-benefit analysis of each proposed contractual service procurement involving an estimated expenditure of more than \$25,000 in accordance with standards prescribed in the rules. Cost benefit-analysis is defined to include total cost, quality, technical expertise and timeliness of a service.

Act 89 also requires agencies to review periodically, and before any renewal, the continued appropriateness of contracting under each services agreement involving an estimated expenditure of more than \$25,000. Act 89 requires the department to complete an annual summary report of the cost benefit-analysis prepared by state agencies in the preceding fiscal year and recommendations for elimination of unneeded contractual service procurements and for the consolidation or resolicitation of existing contractual service procurements.

<b>Publication Date:</b>	<b>July 1, 2006</b>
<b>Effective Date:</b>	<b>July 1, 2006</b>
<b>Expiration Date:</b>	<b>November 28, 2006</b>
<b>Hearing Date:</b>	<b>August 11, 2006</b>
	<b>[See Notice this Register]</b>

---

### Agriculture, Trade & Consumer Protection (2)

1. Rules adopted revising **chs. ATCP 10 and 11**, relating to a poultry flock certification program.

#### Finding of Emergency

(1) The Wisconsin department of agriculture, trade and consumer protection ("DATCP") administers Wisconsin's animal health and disease control programs, including the national poultry improvement program (NPIP). The NPIP is designed to prevent the spread of *Salmonella pullorum*, fowl typhoid and, in the case of turkeys, *Mycoplasma gallisepticum*. NPIP is governed by 9 CFR 145 and 147. NPIP enrollment is voluntary, but non-enrolled flocks are subject to certain movement restrictions.

(2) Current DATCP rules prohibit the import, use, sale or movement of poultry, farm-raised game birds or their eggs for breeding or hatching unless they originate from flocks that are enrolled in NPIP and meet NPIP standards. Current DATCP rules also prohibit the exhibition of poultry or farm-raised game birds at a fair, exhibition or swap meet unless they originate from an NPIP "pullorum-typhoid clean" or equivalent flock, or are individually tested for pullorum-typhoid.

(3) NPIP is primarily designed for large commercial flocks that move birds or eggs in interstate commerce. NPIP requires yearly testing of all sexually mature birds, and routine inspections. Fees for enrollment in the program differ based on flock size and purpose, and range from \$20 to \$200. NPIP enrollment and testing may be cost-prohibitive for small flocks. Current rules restrict market access and exhibition by small producers of poultry and farm-raised game birds, and impose an unnecessary burden on those producers. Some small producers may be tempted to ignore or subvert current rules, in order to market or exhibit their poultry or farm-raised game birds. That may, in turn, create unnecessary risks of disease.

(4) It is urgently necessary to provide alternative disease monitoring options for small producers of poultry and

farm-raised game birds, so that those producers can legally and economically move, market and exhibit their birds. The current lack of alternatives creates an unnecessary economic hardship, and an unnecessary risk of disease spread.

(5) DATCP has proposed rules which would create practical disease monitoring alternatives for small producers of poultry and farm-raised game birds. DATCP is proceeding to adopt those rules by normal rulemaking procedures. However, normal rulemaking procedures require at least a year to complete. A temporary emergency rule is needed to eliminate unnecessary hardship and risk in the short term, and to provide practical and effective disease monitoring for this year's fair and exhibition season.

**Publication Date:** March 3, 2006  
**Effective Date:** March 3, 2006  
**Expiration Date:** July 31, 2006  
**Hearing Date:** March 31, 2006

2. Rules adopted revising ch. ATCP 136, relating to mobile air conditioners; reclaiming or recycling refrigerant.

#### Finding of Emergency

(1) The Wisconsin department of agriculture, trade and consumer protection ("DATCP") administers s. 100.45, Stats. DATCP has adopted rules under ch. ATCP 136 to implement s. 100.45, Stats. The current rules regulate the sale and installation of mobile air conditioner refrigerants, including "substitute refrigerants" such as R 134A. Among other things, the current rules prohibit the sale of mobile air conditioner refrigerants in containers holding less than 15 lbs. of refrigerant.

(2) On June 28, 2006, the Legislature's Joint Committee for Review of Administrative Rules (JCRAR) voted to suspend all current state rules related to the installation and sale of "substitute refrigerants" of any kind. This broad exemption will become effective on July 7, 2006 unless by that date DATCP adopts a narrower alternative exemption by emergency rule. The narrower exemption specified by JCRAR would apply only to the sale of the "substitute refrigerant" R 134A. The exemption would allow the sale of R 134A to the general public in "do-it-yourself" containers holding less than 15 lbs.

(3) DATCP is adopting this emergency rule for the sole purpose of preventing a broader JCRAR suspension of rules that currently prevent the release of mobile air conditioner refrigerant into the environment.

**Publication Date:** July 12, 2006  
**Effective Date:** July 12, 2006  
**Expiration Date:** December 9, 2006  
**Hearing Date:** August 15, 2006  
 [See Notice this Register]

---

### Commerce (Commercial Buildings, Chs. Comm 61-65)

Rules adopted revising **ch. Comm 62**, relating to automatic fire suppression for student housing facilities serving colleges and universities.

#### Finding of Emergency

Department of Commerce finds that an emergency exists within the state of Wisconsin and that adoption of a rule is

necessary for the immediate preservation of the public health, safety and welfare. A statement of the facts constituting the emergency is as follows.

1. In accordance with sections 101.14 (4) (b) 3., Stats., and the provisions under 2005 Wisconsin Act 78, the department has the responsibility to promulgate rules requiring the installation of automatic fire sprinkler systems in various student housing facilities serving colleges and universities.

2. 2005 Wisconsin Act 78 was published on January 6, 2006, making January 7, 2006 the effective date of the Act.

3. Various provisions of the Act specified the effective date as the trigger to install the automatic fire sprinkler systems.

4. The department recognizes that promulgating this emergency rule will incorporate under the commercial building code, chapters, Comm 61 to 65, specific design and construction standards for new student housing facilities that are consistent with the intent of the Act.

5. The department recognizes that without promulgating this emergency rule, there could be confusion in design of any new student housing to be constructed in the very near future. The omission of the automatic fire sprinkler system during the initial design and construction would potentially place lives at greater risk.

6. In addition, the department recognizes that without promulgating this emergency rule, the confusion in omitting the automatic fire sprinkler system would result in additional costs to retrofit the installation of the system in order to fulfill the statutory obligation based upon the effective date of the Act.

**Publication Date:** March 4, 2006  
**Effective Date:** March 4, 2006  
**Expiration Date:** August 1, 2006  
**Hearing Date:** May 15, 2006  
**Extension Through:** September 29, 2006

---

### Commerce (Financial Resources for Business and Communities, Chs. Comm 105 to 131)

Rule adopted creating **ch. Comm 131**, relating to diesel truck idling reduction grants.

#### Exemption from Finding of Emergency

The legislature by Section 9108 (1w) in 2005 Wisconsin Act 25, provides an exemption from a finding of emergency for the adoption of this rule.

The rules specify who is eligible for receiving a grant in this program for purchasing and installing diesel truck idling reduction equipment. Eligible costs are also specified, along with how to apply for the grants. Parameters for awarding the grants are likewise specified. These parameters include (1) disallowing grants to any applicant who is failing to comply with any conditions imposed on any previous grant received in this program; and (2) alerting applicants that the Department may (a) refuse to award grants for idling reduction equipment on truck tractors that do not have a sleeper berth, (b) annually allocate up to 25 percent of the grant funding to applicants who own and operate 50 or fewer truck tractors, and (c) set deadlines for submitting applications, and then prorate the awards to the applicants if the total funding requested in the applications exceeds the available revenue.

**Publication Date:** June 30, 2006  
**Effective Date:** July 1, 2006  
**Expiration Date:** November 28, 2006  
**Hearing Date:** July 25, 2006

### Corrections

A rule was adopted creating **s. DOC 332.19**, relating to a sex offender registration fee.

#### Finding of Emergency

The department of corrections finds that an emergency exists and that rules are necessary for the immediate preservation of public peace, health, safety and welfare. A statement of the facts constituting the emergency is: Under 2005 WI Act 25, the legislature authorized the department to establish a sex offender registration fee. If the rule is not created promptly and immediately, the department will not be able to collect the fees which are to be used to offset the costs of monitoring probationers, parolees, or persons on extended supervision, which could result in a lessening of supervision due to budget limitations.

The purpose of the emergency rule is to establish an annual sex offender registration fee to partially offset the costs of monitoring persons who are on probation, parole, or extended supervision. The permanent rule process has been started. However, the permanent rule process will take approximately nine months to complete. Emergency rules are necessary to respond promptly to the collection of fees while permanent rules are being developed.

**Publication Date:** June 8, 2006  
**Effective Date:** June 8, 2006  
**Expiration Date:** November 5, 2006  
**Hearing Date:** July 18, 2006

### Elections Board

Rules adopted creating **s. EIBd 1.395**, relating to the use of funds in a federal campaign committee that has been converted to a state campaign committee and relating to the use of those converted funds whose contribution to the federal committee would not have been in compliance with Wisconsin law if the contribution had been made directly to a state campaign committee.

#### Finding of Emergency

The Elections Board finds that an emergency exists in the recent change in federal law that permits the transfer of the funds in a federal candidate campaign committee's account to the candidate's state campaign committee account and finds that a rule is necessary for the immediate preservation of the public peace, health, safety or welfare. A statement of the facts constituting the emergency is as follows:

Since the Bi-Partisan Campaign Reform Act of 2002 (BICRA), transfers of funds from a federal campaign committee to a state campaign committee had not been authorized under federal law. In November, 2004, Congress amended the Federal Election Campaign Act, (H.R. 4818, s. 532 (3) and 532 (4), to permit the transfer of a federal candidate's campaign committee's funds to the candidate's state campaign committee, if state law permitted, and subject to the state law's requirements and restrictions.

Because of Congress' action in November, 2004, money which had not been available to a state committee under BICRA, and which might not have qualified for use for political purposes in a state campaign because of its source or because of other noncompliance with state law, could now be transferred to a state committee, if state law permitted. Wisconsin law, under the Board's current rule, s. EIBd 1.39, Wis. Adm. Code, allows for conversion of federal campaign committees, and their funds, to a state campaign committee without regard to the source of those funds and without regard to contribution limitations.

Restricting the use of such money to that money which has been contributed to the candidate's federal committee, under circumstances in which the contribution would have complied with Wisconsin law if it had been given directly to the Wisconsin campaign committee, is found to be in the public interest.

**Publication Date:** February 3, 2005  
**Effective Date:** February 3, 2005\*  
**Expiration Date:** July 3, 2005  
**Hearing Date:** May 18, 2005

\* On February 9, 2005, the Joint Committee for Review of Administrative Rules suspended this emergency rule.

### Emergency Management

Rule adopted creating **ch. WEM 7**, relating to disaster assistance for local governments.

#### Finding of Emergency

The Wisconsin Division of Emergency Management finds that an emergency exists and that a rule is necessary for the immediate preservation of the public peace, health, safety or welfare. A statement of facts constituting an emergency is as follows:

1. The 2005 Wis. Act 269 created the major disaster assistance program under Wis. Stats. § 166.03 (2) (b) 9. An annual appropriation of \$3,000,000 SEG A for fiscal years 2005-06 and 2006-07 was established under Wis. Stats. § 20.465 (3) (b) (s) from the petroleum inspection fund. These funds were provided to make payments to local units of government for damages and costs incurred as a result of a major catastrophe. This Act was made retroactive to January 1, 2005.

2. The Act requires the Wisconsin Department of Military Affairs, through its Division of Emergency Management, to promulgate rules to implement and establish the application process and the criteria to determine eligibility under the major disaster assistance program. The Division will immediately begin the permanent rule-making process for establishing administrative rules for these payments, but cannot complete the required hearings and review of these rules prior to the lapse of funds retained in the major disaster assistance appropriation for fiscal year 2005-06.

3. To ensure that appropriated funds for fiscal year 2005-06 are timely paid to local governmental units for damages and eligible costs incurred as a direct result of major catastrophes, emergency administrative rules must be established immediately.

**Publication Date:** June 8, 2006  
**Effective Date:** June 8, 2006  
**Expiration Date:** November 5, 2006  
**Hearing Date:** August 14, 15, 16 & 17, 2006  
[See Notice this Register]

---

## Health and Family Services

Rules were adopted revising **chs. HFS 110 and 111**, relating to licensing emergency medical technicians and affecting small businesses.

### Finding of Emergency

The Department of Health and Family Services finds that an emergency exists and that the adoption of an emergency rule is necessary for the immediate preservation of the public, health, safety and welfare.

The facts constituting the emergency are as follows:

In Wisconsin there are approximately 430 ambulance service providers. Approximately 80% are volunteer (not for profit) or owned by private for profit entities. The remaining 20% are government owned. A total of 129 ambulance service providers and 2,812 licensed individuals in 48 counties currently provide emergency medical services at the EMT–basic–IV (74) or EMT–provisional intermediate (55) level to approximately 2.65 million Wisconsin residents. The provider industry estimates that these ambulance service providers are losing approximately \$1.5 million dollars in reimbursement revenues annually due to the codification of the EMT–basic IV services in ch. HFS 110 as basic life support. The loss is likely to increase when the provisional EMT–intermediate is renamed EMT–basic IV effective July 1, 2006, and an estimated 95% of the individuals who are currently licensed and titled as provisional EMT–intermediate will be renamed EMT–basic IV. Ambulance service providers report that they cannot continue to cover the costs of training and operating at the advanced life support level of care while being reimbursed at the basic life support level of care. Consequently, the level of emergency medical services provided in over half of the state's 72 counties may be reduced or become non-existent unless changes are implemented.

To maintain the level of emergency medical services that are currently being provided and to avoid confusion about the skills and level of care provided by the EMT–basic IV licensee, the department in these emergency rules is changing the name of the EMT–basic IV license to EMT–intermediate technician and moving the licensing requirements to ch. HFS 111. These changes will allow ambulance service providers to charge for both at the higher rate of reimbursement. In addition, these emergency rules will modify the continuing education requirements under ch. HFS 110 to allow ambulance service providers flexibility in providing refresher training to EMT–basic licensees. This change will reduce financial and scheduling burdens on providers by allowing them to use their training dollars more cost effectively.

**Publication Date:** July 1, 2006  
**Effective Date:** July 1, 2006  
**Expiration Date:** November 28, 2006  
**Hearing Dates:** July 25, 26 and 27, 2006

---

## Natural Resources (4) (Fish, Game, etc., Chs. NR 1—)

1. Rules were adopted amending **ch. NR 25** relating to commercial fishing for lake trout in Lake Superior.

### Finding of Emergency

The Department of Natural Resources finds that an emergency exists and the foregoing rules are necessary for the immediate preservation of the public peace, health, safety or welfare. A statement of facts constituting the emergency is: The waters of Lake Superior were not part of the extensive off-reservation treaty rights litigation known as the Voigt case. The parties stipulated that the Lake Superior rights would be dealt with, to the extent possible, by agreement rather than litigation. This rule represents the implementation of the most recent negotiated amendments to the agreement between the State and the Red Cliff and Bad River Bands. In order to comply with the terms of the agreement, the State must change its quotas and commercial fishing regulations at the earliest possible date. Failure by the State to do so will not only deprive state fishers of increased harvest opportunities available under the agreement, but could also jeopardize the agreement, putting the entire Lake Superior fishery at risk of litigation.

**Publication Date:** December 15, 2005  
**Effective Date:** December 15, 2005  
**Expiration Date:** May 14, 2006  
**Hearing Date:** January 13, 2006  
**Extension Through:** September 10, 2006

2. Rules were adopted revising **s. NR 10.25**, relating to the issuance of turkey hunting permits.

### Plain Language Analysis

This rule change will allow the department to issue turkey tags remaining after the initial permit drawing in accordance with state statute, which is first-come, first-served. Additionally, this rule updates code language to accurately describe how permits are currently issued (by zone and by time period) and establishes that no person may obtain more than one turkey carcass tag per day.

### Exemption from finding of emergency

2005 Wisconsin Act 25, allowed the department to utilize the procedure under s. 227.24, Stats., to promulgate rules implementing s. 29.164, Stats., for the period before the date on which permanent rules take effect, but may not exceed the period authorized under s. 227.24 (1) (c) and (2), Stats. Notwithstanding s. 227.24 (1) (a), (2) (b), and (3), Stats., the department is not required to provide evidence that promulgating a rule under this subsection as an emergency rule is necessary for the preservation of the public peace, health, safety, or welfare and is not required to provide a finding of emergency for a rule promulgated under this subsection.

**Publication Date:** February 13, 2006  
**Effective Date:** March 1, 2006  
**Expiration Date:** July 29, 2006  
**Hearing Date:** April 10, 2006

3. Rules were adopted revising **ch. NR 47**, relating to the forestry research and development grant program.

### Finding of Emergency

The emergency rule procedure, pursuant to s. 227.24, Stats., is necessary and justified in establishing rules to regulate and administer grant programs. The State legislature has delegated responsibility for rule-making to the Department of Natural Resources. Normal rule-making procedures will not allow the establishment of the rules in time to allocate funds during this fiscal year. Failure to establish rules during FY06 will result in lost opportunity for

Wisconsin interests to compete for federal grants that improve the public health, public good and the environment through the development of alternative renewable energy and biochemical sources from forestry biomass.

**Publication Date:** March 16, 2006  
**Effective Date:** March 16, 2006  
**Expiration Date:** August 13, 2006  
**Hearing Date:** April 24 & 26, 2006

4. Rules were adopted creating s. NR 45.04 (1) (g), relating to regulation of firewood entering and exiting department lands and affecting small businesses.

#### **Finding of Emergency**

It is important to have restrictions on out-of-state firewood entering department lands in place this camping season due to recent developments in efforts to eradicate and quarantine emerald ash borer in the areas where it is currently established. In Michigan, Ohio, Indiana and Ontario, eradication programs are being dramatically scaled back or abandoned entirely for this summer. A recent audit of quarantine efforts in Michigan where emerald ash borer is most abundant and widespread is critical and faults their program for lax enforcement and poor education of the public to the dangers of moving firewood. Given this situation, a need for an external quarantine to protect Wisconsin forest resources, industry, and community trees becomes obvious. The Wisconsin Department of Agriculture, Trade and Consumer Protection has proposed an external quarantine on host material of emerald ash borer and three other invasive pests and diseases and our firewood regulation would help support this effort, provide an opportunity for education of the public and reduce one of the reasons people move firewood: for use while camping.

**Publication Date:** March 27, 2006  
**Effective Date:** April 1, 2006  
**Expiration Date:** August 29, 2006  
**Hearing Date:** July 5, 2006

---

## **Natural Resources (2)** **(Environmental Protection – Water Regulation, Chs. NR 300—)**

1. Rules adopted revising ch. NR 326, relating to regulation of piers, wharves, boat shelters, boat hoists, boat lifts and swim rafts in navigable waterways.

#### **Finding of emergency**

The emergency rule procedure, pursuant to s. 227.24, Stats., is necessary and justified in establishing rules to protect the public health, safety and welfare. The Wisconsin Legislature recently enacted 2003 Wisconsin Act 118, to streamline the regulatory process for activities in public trust waters. The state has an affirmative duty to administer the new law in a manner consistent with the public trust responsibilities of the State of Wisconsin under Article IX, Section I of the Wisconsin Constitution.

2003 Act 118 identifies certain activities that may be undertaken in public trust waters exempt from a permit, or under a general permit. Certain activities may not be undertaken in waters that are defined as “areas of special natural resource interest” or at other locations where the activity would cause detrimental impacts on public rights and

interests in navigable waters. Without emergency rules to aid in administering the new law, the following severe problems will occur:

Until general permits are created by rule, any activity which is not exempt requires an individual permit with an automatic 30-day public notice. The required 30-day comment period will unnecessarily delay hundreds of construction projects that otherwise could go ahead with specified conditions for protecting lakes and streams (for example, all new riprap and culvert applications currently require public notices).

Unclear wording of exemptions currently puts property owners, contractors and consultants at risk of violation. Without clear procedures and standards established by emergency rule, many more people may request exemption determinations, slowing the decisions on individual permit applications.

Wording of exemptions and temporary grading jurisdiction puts lakes and streams at risk. Without standards as intended and described in the new law, exempted activities and grading along shorelines will cause inadvertent but permanent destruction of fish and wildlife habitat, loss of natural scenic beauty and reduced water quality. Rights of neighboring property owners may also be harmed. Cumulatively over one or two construction seasons, these impacts will have immediate and permanent effects on Wisconsin’s water-based recreation and tourism industry.

To carry out the intention of the Legislature that 2003 Act 118 to speed decision-making but not diminish the public trust in state waters, these emergency rules are required to establish definitions, procedures and substantive standards for exemptions, general permits and jurisdiction under the new law.

**Publication Date:** April 19, 2004  
**Effective Date:** April 19, 2004\*  
**Expiration Date:** September 16, 2004  
**Hearing Date:** May 19, 2004

\*On June 24, 2004, the Joint Committee for Review of Administrative Rules suspended this emergency rule.

2. Rules adopted creating ss. NR 328.31 to 328.36, relating to shore erosion control on rivers and streams.

#### **Finding of Emergency**

The emergency rule procedure, pursuant to s. 227.24, Stats., is necessary and justified in establishing rules to protect the public health, safety and welfare. The Wisconsin Legislature enacted 2003 Wisconsin Act 118 to streamline the regulatory process for activities in public trust waters. The state has an affirmative duty to administer the law in a manner consistent with the public trust responsibilities of the State of Wisconsin under Article IX, Section I of the Wisconsin Constitution.

Act 118 identifies certain activities that may be undertaken as exempt from a permit, or under a general permit. There are no statutory exemptions for shore protection on rivers and streams. Without emergency rules to create general permits, all shore protection projects on rivers and streams require an individual permit with an automatic 30-day public notice. The required 30-day comment period will unnecessarily delay projects that otherwise could go ahead with prescribed conditions established in a general permit. To carry out the intention of Act 118 to speed decision-making but not diminish the public trust in state waters, these emergency rules are required to establish general permits to be in effect for the 2006 construction season, with specific standards for shore erosion control structures on rivers and streams.

**Publication Date:** May 5, 2006  
**Effective Date:** May 8, 2006  
**Expiration Date:** October 4, 2006  
**Hearing Date:** June 13, 2006

**Publication Date:** July 1, 2006  
**Effective Date:** July 1, 2006  
**Expiration Date:** November 28, 2006  
**Hearing Date:** August 8, 2006

---

## Regulation and Licensing

Rules were adopted creating **chs. RL 164 and 165**, relating to a code of conduct and renewal requirements for substance abuse professionals.

### Plain language analysis

The purpose of this emergency rule is to create a code of conduct to facilitate assumption of disciplinary proceedings as part of the transfer of the regulation of substance abuse professionals from the Department of Health and Family Services to the Department of Regulation and Licensing. The emergency rule also sets forth the requirements for renewal.

The Department of Regulation and Licensing must promulgate this emergency rule for the period before the effective date of the permanent rules as promulgated under Wis. Stats. s. 440.88 (3). Under the previous regulatory scheme, the Department of Health and Family Services and the Wisconsin Certification Board had established a code of conduct and restrictions on late renewals. This emergency rule continues the applicability of the rules until the department, with the advice of the Advisory Committee, can establish permanent rules.

### Exemption from finding of emergency

Section 9140 (1q) of 2005 Wisconsin Act 25 states in part: "Notwithstanding section 227.24 (1) (a), (2) (b), and (3) of the statutes, the department is not required to provide evidence that promulgating a rule under this subsection as an emergency rule is necessary for the preservation of the public peace, health, safety, or welfare and is not required to provide a finding of emergency for a rule promulgated under this subsection."

**Publication Date:** April 15, 2006  
**Effective Date:** April 15, 2006  
**Expiration Date:** September 12, 2006  
**Hearing Date:** June 27, 2006

---

## Transportation

Rules adopted creating **ch. Trans 515**, relating to contractual service procurement.

### Exemption from finding of emergency

The Legislature, by Section 8 of 2005 Wis. Act 89, provides an exemption from a finding of emergency for the adoption of the rule.

### Analysis Prepared by the Department of Transportation

The proposed rule requires a cost benefit analysis before procuring engineering or other specialized services under s. 84.01 (13), Stats., in excess of \$25,000 when those services are normally performed by state employees. The required analysis includes a comparison between the costs of contracting out and performing the services with state employees. The analysis also considers other subjective factors such as timeliness, quality and technical expertise.

---

## Workforce Development (Labor Standards, Chs. DWD 270–279)

Rules adopted revising **ss. DWD 274.015 and 274.03** and creating **s. DWD 274.035**, relating to overtime pay for employees performing companionship services.

### Finding of emergency

The Department of Workforce Development finds that an emergency exists and that a rule is necessary for the immediate preservation of the public peace, health, safety, or welfare. A statement of facts constituting the emergency is:

On January 21, 2004, pursuant to s. 227.26(2)(b), Stats., the Joint Committee for Review of Administrative Rules directed the Department of Workforce Development to promulgate an emergency rule regarding their overtime policy for nonmedical home care companion employees of an agency as part of ch. DWD 274.

### Analysis Prepared by the Department of Workforce Development

Statutory authority: Sections 103.005, 103.02, and 227.11, Stats.

Statutes interpreted: Sections 103.01 and 103.02, Stats.

Section 103.02, Stats., provides that "no person may be employed or be permitted to work in any place of employment or at any employment for such period of time during any day, night or week, as is prejudicial to the person's life, health, safety or welfare." Section 103.01 (3), Stats., defines "place of employment" as "any manufactory, mechanical or mercantile establishment, beauty parlor, laundry, restaurant, confectionary store, or telegraph or telecommunications office or exchange, or any express or transportation establishment or any hotel."

Chapter DWD 274 governs hours of work and overtime. Section DWD 274.015, the applicability section of the chapter, incorporates the statutory definition of "place of employment" and limits coverage of the chapter to the places of employment delineated in s. 103.01 (3), Stats., and various governmental bodies. Section DWD 274.015 also provides that the chapter does not apply to employees employed in domestic service in a household by a household.

Section 103.02, Stats., directs that the "department shall, by rule, classify such periods of time into periods to be paid for at the rate of at least one and one-half times the regular rates." Under s. DWD 274.03, "each employer subject to this chapter shall pay to each employee time and one-half the regular rate of pay for all hours worked in excess of 40 hours per week." Section DWD 274.04 lists 15 types of employees who are exempt from this general rule and s. DWD 274.08 provides that the section is inapplicable to public employees.

Nonmedical home care companion employees who are employed by a third-party, commercial agency are covered by the overtime provision in s. DWD 274.03. Section DWD 274.03 applies to all employees who are subject to the chapter and not exempt under ss. DWD 274.04 or 274.08. The chapter applies to companion employees of a commercial agency because under s. DWD 274.015 a commercial agency is considered a mercantile establishment. Section DWD 270.01 (5) defines a mercantile establishment as a commercial, for-profit business. The chapter does not apply to companion

employees of a nonprofit agency or a private household. In addition, none of the exemptions to the overtime section in ss. DWD 274.04 or 274.08 apply to companion employees of a commercial agency.

The Joint Committee for the Review of Administrative Rules has directed DWD to promulgate an emergency rule regarding the overtime policy for nonmedical home care companion employees of an agency. This provision is created at s. DWD 274.035 to say that employees who are employed by a mercantile establishment to perform companionship services shall be subject to the overtime pay requirement in s. DWD 274.03. "Companionship services" is defined as those services which provide fellowship, care, and protection for a person who because of advanced age, physical infirmity, or mental infirmity cannot care for his or her own needs. Such services may include general household work and work related to the care of the aged or infirm person such as meal preparation, bed making, washing of clothes, and other

similar services. The term "companionship services" does not include services relating to the care and protection of the aged or infirm person that require and are performed by trained personnel, such as registered or practical nurses.

This order also repeals and recreates the applicability of the chapter section and the overtime section to write these rules in a clearer format. There is no substantive change in these sections.

**Publication Date: March 1, 2004**

**Effective Date: March 1, 2004\***

**Expiration Date: July 29, 2004**

\* On April 28, 2004, the Joint Committee for Review of Administrative Rules suspended s. DWD 274.035 created as an emergency rule.

---



---

## Scope statements

---



---

### Commerce

#### Subject

*Objective of the rule.* The objective is to update the department's administrative rules relating to POWTS. This code update may result in one or more rule packages to be presented for public hearings and may include minor changes to other department rules that are related to the POWTS program. A primary driver for the rule update is 2005 Wisconsin Act 347. Certain provisions of Act 347 give specific direction to the department and place additional responsibilities on the department and governmental units particularly with regard to POWTS maintenance. The department has determined that it must consider how to implement the applicable provisions of Act 347 in a timely and equitable manner by working with an advisory code council to review the portions of Act 347 that impact the POWTS program (primarily chapter Comm 83) and the WI Fund program (chapter Comm 87).

#### Policy Analysis

The current rules, chapters Comm 81–87 apply to POWTS program administrative functions, POWTS soil testing, design, construction, inspection and maintenance. The rules also apply to the WI Fund program.

Chapter Comm 83 was last revised effective February, 2004. Minor technical issues were addressed during that code revision. This code project will focus on the additional responsibilities placed on the department and governmental units by 2005 Wisconsin Act 347 specifically in the area of POWTS maintenance. In addition, administrative procedures and additional technical issues identified since the last revision will be addressed and updated. The target effective date for this revision is Spring, 2008.

The alternative of not revising these code chapters will result in the continued use of administrative rules that contain technical inaccuracies. It will also prevent the department from addressing the direction and responsibilities contained in Act 347.

#### Statutory authority

Section 145.02 (3) (d), Wis. Stats.

Section 145.13, Wis. Stats.

#### Staff time required

The department estimates it will take approximately 600 hours to develop this rule. This time includes reviewing current code and national standards, drafting the rule and processing the rule through public hearings, legislative review and adoption. The department will assign existing staff to perform the rule development process.

#### Entities affected by the rule

This rule will affect entities public and private that own POWTS or are involved in POWTS program administrative functions, POWTS soil testing, design, construction, inspection and maintenance.

#### Comparison with federal regulations

There are two existing federal regulations that address some of the activities that are regulated by this rule (Chapter Comm 83).

40 CFR 144.80(e) addresses Class V Wells also known as Shallow Injection Wells. Specifically, 40 CFR 144.3, defines "Sanitary Waste" as including domestic wastewater. Chapter Comm 83 addresses treatment and dispersal of domestic wastewater. Also, 40 CFR 144.3, defines "Wells or Injection Wells" as including certain septic systems. Class V regulations specifically address "Large Capacity Septic Systems" which are defined as systems receiving sanitary wastes from multiple dwellings or from non-residential establishments where the system has a capacity to serve 20 or more person per day. These systems are "authorized by rule" provided they meet two minimum federal requirements. 1. The owner or operator submits basic inventory information. 2. The injectate (wastewater) cannot endanger underground sources of drinking water. Chapter Comm 83, Wis. Adm. Code, addresses Private Onsite Wastewater Treatment Systems (POWTS) which include septic systems that serve all structures residential and non-residential regardless of capacity. Owner information is required as part of the permitting process. Section 145.13, Wis. Stats., requires that chapter Comm 83, Wis. Adm. Code, comply with the provisions of chapter 160, Wis. Stats. Chapter NR 140, Wis. Adm. Code, contains a list of substances that have preventative action limits and enforcement standards. This list is more specific than the current federal regulations. Chapter Comm 83, Wis. Adm. Code, incorporates the applicable provisions of chapter 160, Wis. Stats., and chapter NR 140, Wis. Adm. Code.

40 CFR Part 122 addresses National Pollutant Discharge Elimination System (NPDES) permits. Chapter Comm 83, Wis. Adm. Code, addresses large POWTS systems which are covered by Wisconsin Pollutant Discharge Elimination System (WPDES) permits that are issued by the Department of Natural Resources. The WPDES permit process is modeled after the NPDES permit process.

There are no proposed federal regulations that would address activities that are regulated by this rule (Chapter Comm 83).

### Marriage and Family Therapy, Professional Counseling and Social Work Examining Board, Professional Counselor Section

#### Subject

The Professional Counselor Section of the Marriage and Family Therapy, Professional Counseling and Social Work Examining Board proposes amending its rules relating to the issuance of training certificates pursuant to the enactment of 2005 Wisconsin Act 422.

#### Policy Analysis

*Objective of the rule.* Training certificates are required in order to obtain 3000 hours of supervised professional

counseling practice before being eligible to receive a professional counselor license. Section MPSW 11.015, sets forth the current requirements for obtaining a training certificate, including a provision that an applicant have an offer of full-time employment. The present certificates are issued for 24 months and are non-renewable. With the enactment of 2005 Wisconsin Act 422 the term "training certificate" is changed to "training license." Additionally, the employment requirement has been eliminated and the amount of time for the credential expanded. Under the proposed new rule, training licenses will be issued for 48 months, with the possibility for an extension. Supervised hours may also be accumulated in an unpaid position.

#### **Existing Policies Relevant to the Rule, New Policies Proposed and Analysis of Policy Alternatives.**

The section passed the following motions relative to the issuance of training certificates:

The application forms for professional counseling licensure and the professional counseling training certificates are to be combined. (*Professional Counselor Section minutes, November 16, 2005*)

All supervised hours accumulated on or before March 1, 2005 (without a training certificate) by those individuals eligible for a training certificate will be counted toward licensure. All supervised hours obtained after March 1, 2005, must be completed under a valid training certificate. (*Professional Counselor Section minutes, November 16, 2004*)

The section designated the credentialing liaison to consult with [Department of Regulation and Licensing] and grant the authority to approve the reapplication of the training certificates. (*Professional Counselor Section minutes, February 1, 2005*)

The Professional Counselor Section will consider applications for PC licensure for those who received their required supervised practice without the benefit of a training certificate on a case-by-case basis for applicants who graduated prior to 2005. (*Professional Counselor Section minutes, October 31, 2005*)

The statutory change does not affect existing holders of professional counselor training certificates. Those certificates are valid for the full 24 months and are non-renewable; however, individuals who have not completed their 3000 hours of supervised training at the conclusion of the 24 months will be permitted to apply for a "new" training license.

#### **Statutory authority**

Sections 15.08 (5) (b), 227.11 (2), 440.035 and 457.13, Wis. Stats.

#### **Comparison with federal regulations**

There is no applicable existing federal legislation.

#### **Entities affected by the rule**

Applicants for professional counseling licensure.

#### **Staff time required**

200 hours.

## **Marriage and Family Therapy, Professional Counseling and Social Work Examining Board, Professional Counselor Section**

### **Subject**

The Marriage and Family Therapist Section of the Marriage and Family Therapy, Professional Counseling and Social Work Examining Board proposes to amend its rules relating to the issuance of training licenses pursuant to the enactment of 2005 Wisconsin Act 422.

### **Policy Analysis**

*Objective of the rule.* Training certificates are required in order to obtain 3000 hours of supervised marriage and family practice before being eligible to receive a marriage and family therapist license. Section MPSW 17.03, sets forth the current requirements for obtaining a training certificate, including a provision that an applicant have an offer of full-time employment. The present certificates are issued for 24 months and are non-renewable. With the enactment of 2005 Wisconsin Act 422 the term "training certificate" is changed to "training license." Additionally, the employment requirement has been eliminated and the amount of time for the credential expanded. Under the proposed new rule, training license would allow applicants to complete their supervised training hours within 48 months, with the possibility for an extension, and would also permit them to complete those hours in an unpaid position. The new rule would also allow applicants who have a master's degree in a related field and who are enrolled in a COAMFTE accredited or MFT Section approved master's or post-degree marriage and family therapy program, for example, to also be eligible for a training license.

### **Existing Policies Relevant to the Rule, New Policies Proposed and Analysis of Policy Alternatives.**

The section passed the following motion relative to the issuance of training certificates at its meeting on April 7, 2004:

The MFT Section may grant a training certificate to an applicant who is employed full-time or who has an offer of full-time employment as an MFT. However, the Section may also grant a training certificate to an applicant who will be in a position, which in the Section's opinion, provides an equivalent experience, and the Section will consider part-time or volunteer positions.

The statutory change does not affect existing holders of marriage and family therapist training certificates. Those certificates are valid for the full 24 months and are non-renewable; however, individuals who have not completed their 3000 hours of supervised training within 24 months will be permitted to apply for a "new" training license.

#### **Statutory authority**

Sections 15.08 (5) (b), 227.11 (2), 440.035 and 457.11, Wis. Stats.

#### **Comparison with federal regulations**

There is no applicable existing federal legislation.

#### **Entities affected by the rule**

Applicants for marriage and family therapist training licensure.

**Staff time required**

200 hours.

**Natural Resources****Subject**

*Objective of the rule.* On January 14, 2002, U.S. EPA published National Drinking Water Regulations for Long-Term 1 Enhanced Surface Water Treatment (LT1); these changes impact all public drinking water systems using surface water or groundwater under the direct influence of surface water (GWUDI) and serve fewer than ten thousand (10,000) people.

This rulemaking will also include revisions to correct minor errors in and updates to the following:

1. the existing interim enhanced surface water treatment rule (IESWTR);
2. the stage 1 disinfection and disinfection byproducts rule (DDBPR);
3. the lead and copper rule (LCR);
4. the drinking water public notification rule (PNR);
5. the radionuclide rule;
6. updating analytical methods; and

Additionally, language will be clarified with regard to total coliform rule (TCR) maximum contaminant level (MCL) determinations impacting systems collecting less than 40 samples per month.

**Policy Analysis**

In order to maintain primacy, Wisconsin must adopt all federal requirements under the Safe Drinking Water Act (SDWA) or have requirements that are equal to or more stringent than the SDWA. In the case of the LT1 regulation there are two alternatives available for Wisconsin to meet this requirement:

1. Full adoption of the LT1 rule for surface water and groundwater under the direct influence of surface water (GWUDI) systems with populations of 10,000 or less. Or,
2. Amending the state version of the Interim Enhanced Surface Water Treatment Rule (IESWTR) to apply to all surface water and GWUDI systems.

Using alternative #1 requires incorporation of rule language that will not be used by any drinking water systems and will only add confusion in understanding NR 809 requirements. Only two systems in Wisconsin will fall under the LT1 requirements and in reality, the LT1 rule will not apply to either. The first system, Wisconsin Veterans Home at King will be using all groundwater in the near future. The second system, Ashland Water Utility, uses an alternative technology – membrane filtration and is required to meet standards of the IESWTR by virtue of their plan of operation. Wisconsin has no systems that are considered GWUDI under the federal regulations

Alternative #2 changes the application of the IESWTR to all surface water and GWUDI systems rather than just those over 10,000. This is consistent with current practice. The requirements of the LT1 were developed based on the IESWTR, but were modified by EPA to reduce the burden on small systems. Since there are no Wisconsin systems to be burdened we do not feel it is necessary to promulgate additional rule language.

The recommendation is to use alternative #2 for meeting the primacy requirement to adopt rules at least as stringent as the federal rules. We propose to have the IESWTR apply to all surface water and GWUDI systems in Wisconsin.

All the minor errors and additions edits have been identified by EPA in various primacy reviews and are required to be completed.

The existing language on non-acute or monthly TCR MCL determination is not clear and therefore needs elucidation, the actual meaning will not be changed.

**Statutory authority**

Sections 280.11 and 281.17 (8) Stats and our EPA primacy agreement require the Department to adopt rules at least as stringent as federal regulation.

**Staff time required**

120 hours.

**Comparison with federal regulations**

This rule change will allow WDNR regulations to remain as stringent as the EPA regulations so that WDNR may maintain primacy (“primary enforcement authority”) for the affected regulation. States with primacy are eligible for federal funding from U.S. EPA. Failure to adopt these federal drinking water regulations into state regulation could result in a decrease or withdrawal of federal funding to Wisconsin’s Drinking Water State Revolving Loan Fund.

There is no additional fiscal impact from this rule beyond what is already imposed by federal regulations and state plan approvals. If Wisconsin does not adopt this change it would be required to adopt the full regulation. The one public water system impacted will continue compliance under the IESWTR since the approval issued for the membrane filter plant is as stringent as the IESWTR.

**Occupational Therapists Affiliated Credentialing Board****Subject**

The current continuing education rule does not allow an exception for hardship, nor is there a provision exempting individuals from the continuing education requirement in the first cycle of licensure.

**Policy Analysis**

*Objective of the rule.* The proposed rule would allow the Board to consider waiving the continuing education requirements when a licensee is unable to complete them due to a hardship. It would also eliminate the need for first time licensees to meet CE requirements in the first cycle of licensure.

**Existing Policies Relevant to the Rule, New Policies Proposed and Analysis of Policy Alternatives.**

The rules of other professions permit credentialing authorities to consider circumstances that interfere with completion of continuing education obligations. Typically the grounds for exception are limited to enumerated exigencies, such as disability, for example, or absence from the country for military service. Allowing for a waiver that is not limited would result in the Board receiving requests without a convincing rationale for waiver. Conversely, disallowing all waiver requests prevents the Board from acknowledging circumstances that cause hardship and can unjustly deprive a license holder of his or her right to practice the profession.

First time licensees apply for a license at varying intervals within a renewal period. For applicants who file on a date proximate to the renewal deadline, the continuing education requirement is the same as it is for those who file on a date proximate to the previous renewal date. There is no recognition of the incongruity this creates among applicants or the difficulties it creates for applicants who must complete all continuing education credits in a very limited period of time prior to the renewal date. Some credentialing authorities pro-rate credits. Others waive the requirement altogether. Without such a provision, applicants may delay filing for a license during the first cycle of licensure to avoid fulfilling the complete continuing education obligation on an abbreviated timeline. This could have an adverse impact on patient care, depending on the demand for occupational therapists at any given time.

#### **Statutory authority**

Sections 15.08 (5) (b), 227.11 (2), 440.035 (1) and 448.965 (1) (b).

#### **Comparison with federal regulations**

None.

#### **Entities affected by the rule**

Occupational Therapists and Occupational Therapist Assistants.

#### **Staff time required**

150 hours.

## **Optometry Examining Board**

#### **Subject**

Amendment of the rules of the Optometry Examining Board pursuant to the provisions of 2005 Wisconsin Act 297, Senate Bill 429, relating to the regulation of optometry; authority and definitions; examination approval; delegation; licensure by endorsement; continuing education; conduct; usage of therapeutic pharmaceutical agents (TPAs) and diagnostic pharmaceutical agents (DPAs); and certificate of registration. The board will be pursuing further amendments to continuing education, supervision requirements and record keeping related to electronic signatures not related to the new provisions under 2005 Wisconsin Act 297.

#### **Policy Analysis**

*Objective of the rule.* To implement the changes in the board's administrative rules pursuant to 2005 Wisconsin Act 297. Additionally, the amendments will include changes to administrative rules on continuing education as a list provided by the Council on Optometric Practitioner Education (COPE) and contained in the rules are outdated; addition of a definition and provisions for electronic signatures for record keeping as the existing rules are silent on the electronic signatures; redefinition of supervision as the current rule specifies and defines immediate supervision.

#### **Existing Policies Relevant to the Rule, New Policies Proposed and Analysis of Policy Alternatives**

The board has recently amended its rules relating to COPE approved continuing education courses to streamline their

educational approval process. Since the rules have been implemented, the board has found that COPE has changed its information relating to a list they provided for inclusion in the board's rules thus making the current list outdated. The board may be further streamlining the continuing education process.

In regards to supervision, the board finds that requirements for immediate supervision is not current with the modern practice of optometry, given easy to use and safe technologies incorporated into the practice of optometry, and in light of the recent additions of delegated authority, provided by 2005 Wisconsin Act 297, which requires a more flexible and reasonable definition of supervision.

#### **Statutory authority**

Sections 15.08 (5) (b), 227.11 (2), 440.035 (1), 449.01 and 449.07, Stats.

#### **Comparison with federal regulations**

There is no applicable existing federal legislation.

#### **Entities affected by the rule**

Licensed optometrists, those potentially operating under their delegated authority.

#### **Staff time required**

160 hours.

## **Regulation and Licensing**

#### **Subject**

Creation of rules to reflect the newly created statutory requirements for the transfer of regulatory authority of cemeteries from the Department of Regulation and Licensing to the Cemetery Board and the creation of licensing requirements for cemeteries. The rules will update chs. RL 50 to 54 to reflect the new statutory requirements.

#### **Policy Analysis**

*Objective of the rule.* To implement the statutory provisions of 2005 Wisconsin Act 25.

#### **Existing Policies Relevant to the Rule, New Policies Proposed and Analysis of Policy Alternatives**

The creation of administrative rules for the licensing and regulation of cemeteries is necessary to implement newly created portions of chapters 157 and 440 of the Wisconsin statutes pursuant to 2005 Wisconsin Act 25. The regulation of cemeteries was previously under the authority of the Department of Regulation and Licensing. New licensure requirements have also been created for cemeteries.

#### **Statutory authority**

Section 15.08 (5) (b) and chapters 157 and 440, Wis. Stats., as amended by 2005 Wisconsin Act 25.

#### **Comparison with federal regulations**

There is no existing or proposed federal regulation that is intended to address the activities to be regulated by the rule.

#### **Entities affected by the rule**

Cemetery licensees and applicants.

#### **Staff time required**

25 hours.

---



---

## Submittal of rules to legislative council clearinghouse

---



---

*Please check the Bulletin of Proceedings – Administrative Rules  
for further information on a particular rule.*

### Administration

On July 12, 2006, the Wisconsin Department of Administration submitted a proposed rule order to amend Chapter Adm 10 of the Wisconsin Administrative Code to the Wisconsin Legislative Council Rules Clearinghouse.

#### Analysis

Statutory Authority: ss. 16.004 (1), 16.705 (2) and 227.11, Stats.

Statutes Interpreted: ss. 16.004 (1), 16.705 (2) and 227.11, Stats

The proposed rule reflect recent statutory changes from Act 89 in order to prescribe uniform procedures for determining whether services are appropriate for contracting under the State procurement system.

#### Agency Procedure for Promulgation

A public hearing will be held on August 11, 2006 at 1:00 p.m. at the Wisconsin Department of Administration Building, St. Croix Room, at 101 E. Wilson Street, Madison, Wisconsin.

#### Contact Person

If you have any questions regarding the proposed rule, please contact:

Terri Lenz

Department of Administration

Telephone: (608) 261-2298

E-Mail: terri.lenz@wisconsin.gov

### Regulation and Licensing

On July 17, 2006, the Department of Regulation and Licensing submitted a proposed rule to the Legislative Council Rules Clearinghouse.

#### Analysis

Statutory authority: Section 227.11 (2), Stats. and subchapter XII of ch. 440, Stats., as created by 2005 Wisconsin Act 292.

The proposed rule-making order relates to the issuance and renewal of licenses, the issuance of temporary permits, standards of practice and grounds for discipline of licensed midwives.

#### Agency Procedure for Promulgation

A public hearing is required and will be held on August 14, 2006 at 9:00 a.m. in Room 121A at 1400 East Washington Avenue, Madison, WI.

#### Contact Person

Pamela Haack, Paralegal, Office of Legal Counsel, (608) 266-0495. Pamela.haack@drl.state.wi.us

### Revenue

On July 5, 2006, the Department of Revenue submitted a proposed rule to the Wisconsin Legislative Council Rules Clearinghouse.

#### Analysis

The proposed rule creates Tax 1.15, relating to the discretion that the department will follow in the enforcement of rules and guidelines as they apply to a small business.

#### Agency Procedure for Promulgation

A public hearing on the proposed rule will be scheduled for August 14, 2006.

The Office of the Secretary is primarily responsible for the promulgation of the proposed rule.

#### Contact Person

If you have questions, please contact:

Dale Kleven

Income, Sales and Excise Tax Division

Telephone (608) 266-8253

E-Mail: dkleven@dor.state.wi.us

### Transportation

On July 12, 2006, the Department of Transportation submitted a proposed rule to the Wisconsin Legislative Council Rules Clearinghouse.

#### Analysis

The proposed rule affects ch. Trans 105, relating to licensing of driver schools and instructors.

#### Agency Procedure for Promulgation

A public hearing is required and scheduled August 14, 2006.

The Division of Motor Vehicles, Bureau of Driver Services is primarily responsible for the promulgation of the proposed rule.

#### Contact Person

If you have questions, please contact:

Julie A. Johnson, Paralegal

(608) 266-8810

### Workforce Development

On July 17, 2006, the Department of Workforce Development submitted proposed rules to the Legislative Council Rules Clearinghouse.

#### Analysis

Statutory authority: Sections 49.136 (4m) and 227.11 (2), Stats.

The proposed rules affect ch. DWD 59, relating to grants supporting community child care initiatives.

**Agency Procedure for Promulgation**

A public hearing is required and will be held on August 16, 2006. The organizational unit responsible for the promulgation of the proposed rules is the DWD Division of Workforce Solutions.

**Contact Person**

Elaine Pridgen

Telephone: (608) 267-9403

Email: [elaine.pridgen@dwd.state.wi.us](mailto:elaine.pridgen@dwd.state.wi.us)

---



---

## Rule-making notices

---



---

### Notice of Hearing Administration [CR 06-090]

NOTICE IS HEREBY GIVEN that pursuant to ss. 16.004 (1), 16.705 (1) and (2), Stats., the Department of Administration will hold a public hearing on the Department's emergency rulemaking order and proposed permanent rulemaking order amending ch. Adm 10, Wisconsin Administrative Code, relating to cost-benefit analyses of contractual services.

#### Date, Time and Location

Friday, August 11, 2006 at 1:00 p.m.  
Wisconsin Administration Building  
101 E. Wilson Street, 1<sup>st</sup> Floor  
St. Croix Room  
Madison, Wisconsin

Interested persons are invited to present information at the hearing. Persons appearing may make an oral presentation but are also urged to submit facts, opinions and arguments in writing as well. Written comments from persons unable to attend the public hearing, or who wish to supplement testimony offered at the hearing, should be directed to: Terri Lenz, Wisconsin Department of Administration, Division of Enterprise Operations, P.O. Box 7867, Madison, WI 53707-7867, or by calling (608) 261-2298, fax at (608) 267-0600 or by email at [terri.lenz@wisconsin.gov](mailto:terri.lenz@wisconsin.gov). Written comments must be received by August 11, 2006, to be included in the record of rule-making proceedings.

#### Analysis Prepared by the Department of Administration

1. Statutes Interpreted: ss. 16.004 (1), 16.705 (2) and 227.11, Stats.
2. Statutory Authority: ss. 16.004 (1), 16.705 (2) and 227.11, Stats.
3. Explanation of agency authority: 2005 Wisconsin Act 89 ("Act 89") renumbered and amended s. 16.705 (8), Stats., amended s. 16.705 (1) and (2), Stats., and created ss. 16.70 (3g) and 16.705 (8) (a) and (b), Stats., in order to prescribe uniform procedures for determining whether services are appropriate for contracting under the State procurement system.
4. Related statute or rule: Administrative rule chapter 10.
5. Plain language analysis: The department intends to promulgate a rule as required by Act 89 to require a cost-benefit analysis to be completed for each bid or request for proposal to compare the cost of contracting for services versus providing the services with state employees.

Currently, all state agencies and UW System campuses may contract for services between \$25,000 and \$200,000 if they can show that the services can be performed more economically or efficiently by such a contract than by state employees. Currently, if the contractual services would be greater than \$200,000, the contracting agency must complete a more rigorous and detailed cost/benefit analysis to demonstrate that the services can be performed more economically or efficiently by such a contract than by state employees. This more rigorous and detailed analysis includes

total cost, quality and nature of services required, specialized skills, time factors, risk factors and legal barriers. Act 89 requires agencies to conduct uniform cost-benefit analysis of each proposed contractual service procurement involving an estimated expenditure of more than \$25,000 in accordance with standards prescribed in the rules. Cost benefit-analysis is defined to include total cost, quality, technical expertise and timeliness of a service.

Act 89 also requires agencies to review periodically, and before any renewal, the continued appropriateness of contracting under each services agreement involving an estimated expenditure of more than \$25,000. Act 89 requires the department to complete an annual summary report of the cost benefit-analysis prepared by state agencies in the preceding fiscal year and recommendations for elimination of unneeded contractual service procurements and for the consolidation or resolicitation of existing contractual service procurements.

6. Summary of, and comparison with, existing or proposed federal regulations: This proposed rule is specific to State of Wisconsin procurement laws and is completely separate from, and unaffected by, federal regulations.

7. Comparison with rules in adjacent states.

Michigan: The department is unaware of and was unable to locate any rules in this state pertaining to this subject.

Minnesota: The department is unaware of and was unable to locate any rules in this state pertaining to this subject.

Illinois: The department is unaware of and was unable to locate any rules in this state pertaining to this subject.

Iowa: The department is unaware of and was unable to locate any rules in this state pertaining to this subject.

8. Summary of factual data and analytical methodologies used and how the related findings support the regulatory approach chosen: 2005 Wisconsin Act 89 requires the department to promulgate this rule.

9. Analysis and supporting documents used to determine effect on small business or in preparation of economic impact statement: The proposed rule prescribes uniform procedures for determining whether services are appropriate for contracting, however the rule does not require agencies and UW System campuses to make a procurement decision based upon the cost benefit analysis and therefore is expected to have no effect on small business.

10. Effect on small business: The proposed rule prescribes uniform procedures for determining whether services are appropriate for contracting, however the rule does not require agencies and UW System campuses to make a procurement decision based upon the cost benefit analysis and therefore is expected to have no effect on small business.

11. Agency contact person: Requests for copies of the proposed rule should be submitted to Terri Lenz, Department of Administration, Division of Enterprise Operations, P.O. Box 7867, Madison, WI 53707-7867. You may also contact Ms. Lenz at (608) 261-2298, by fax at (608) 267-0600 or by email at [terri.lenz@wisconsin.gov](mailto:terri.lenz@wisconsin.gov).

12. Place where comments are to be submitted and deadline for submission: Comments on the proposed rule should be submitted to Terri Lenz, Department of Administration, Division of Enterprise Operations, P.O. Box 7867, Madison, WI 53707-7867. You may also contact Ms. Lenz at (608)

261–2298, by fax at (608) 267–0600 or by email at [terri.lenz@wisconsin.gov](mailto:terri.lenz@wisconsin.gov).

13. Fiscal effect: The fiscal estimate for the act is attached.

### Initial Regulatory Flexibility Analysis

The proposed rule prescribes uniform procedures for determining whether services are appropriate for contracting, however the rule does not require agencies and UW System campuses to make a procurement decision based upon the cost benefit analysis and therefore is expected to have no effect on small business.

### Fiscal Estimate

A copy of the proposed rules and the full fiscal estimate may be obtained from the Department of Administration upon request.

### Agency Contact

A copy of the emergency rule may be obtained upon request from Terri Lenz, Wisconsin Department of Administration, Division of Enterprise Operations, P.O. Box 7867, Madison, WI 53707–7867, or by calling (608) 261–2298, fax at (608) 267–0600 or by email at [terri.lenz@wisconsin.gov](mailto:terri.lenz@wisconsin.gov).

## Notice of Hearing

### Agriculture, Trade and Consumer Protection

[CR 06–085]

*(reprinted from 7/15/06 Wis. Adm. Register)*

The state of Wisconsin Department of Agriculture, Trade and Consumer Protection (DATCP) announces that it will hold public hearings on a proposed repeal and recreation of chapter ATCP 156, Wis. Adm. Code, relating to Seed Potato Certification and Grading.

DATCP will hold three public hearings at the times and places shown below. DATCP invites the public to attend the hearings and comment on the proposed rule. Following the public hearings, the hearing record will remain open until Thursday, August 31, 2006 for additional written comments. Comments may be sent to the Division of Trade and Consumer Protection at the address below, by email to [kevin.leroy@datcp.state.wi.us](mailto:kevin.leroy@datcp.state.wi.us) or online at <https://apps4.dhfs.state.wi.us/admrules/public/Home>

### Copy of rule

You may obtain a free copy of this rule by contacting the Wisconsin Department of Agriculture, Trade and Consumer Protection, Division of Trade and Consumer Protection, 2811 Agriculture Drive, P.O. Box 8911, Madison, WI 53708. You may also obtain a copy by calling (608) 224–4928 or emailing [kevin.leroy@datcp.state.wi.us](mailto:kevin.leroy@datcp.state.wi.us). Copies will also be available at the hearings. To view the proposed rule online, go to:

<https://apps4.dhfs.state.wi.us/admrules/public/Home>

### Written comments

To provide comments or concerns relating to small business, please contact DATCP's small business regulatory coordinator Keeley Moll at the address above, by emailing to [Keeley.Moll@datcp.state.wi.us](mailto:Keeley.Moll@datcp.state.wi.us) or by telephone at (608) 224–5039.

Hearing impaired persons may request an interpreter for these hearings. Please make reservations for a hearing interpreter by July 31, 2006, by writing to Kevin LeRoy, Division of Trade and Consumer Protection, P.O. Box 8911, Madison, WI 53708–8911, telephone (608) 224–4584.

Alternatively, you may contact the DATCP TDD at (608) 224–5058. Handicap access is available at the hearings.

### Hearing Dates and Locations

#### Monday, August 7, 2006

1:00 p.m. until 3:00 p.m.  
Department of Agriculture, Trade and Consumer Protection  
Board Room (CR–106)  
2811 Agriculture Drive  
Madison, Wisconsin, 53718–6777

#### Wednesday, August 9, 2006

10:00 a.m. until 11:30 a.m.  
The Portage County Public Library  
Charles M. White Library Building  
The Pinery Room  
1001 Main Street  
Stevens Point, Wisconsin 54481

#### Wednesday, August 9, 2006

2:30 p.m. until 5:00 p.m.  
Langlade County Fair Grounds  
Clover Room, Multipurpose Building  
1581 Neva Road  
Antigo, Wisconsin, 54409–2340

### Analysis Prepared by the Department of Agriculture, Trade and Consumer Protection

This rule repeals and recreates current rules related to Wisconsin's certified seed potato program, a voluntary program for the certification and grading of seed potatoes in this state. The program is jointly administered by the Wisconsin department of agriculture, trade and consumer protection ("DATCP") and the university of Wisconsin college of agricultural and life sciences (the "college"). This rule updates and clarifies current certification standards and procedures.

### Statutory Authority

Statutory authority: ss. 93.07 (1), 93.09, 100.14 (1) and 100.20 (2), Stats.

Statutes interpreted: ss. 93.06 (1), (1m), (1p), (1q) and (11), 93.09, 100.14 (1) and 100.20, Stats.

DATCP has broad authority, under s. 93.07(1), Stats., to adopt rules to implement laws under its jurisdiction. DATCP also has authority, under the above statutes, to adopt grading and certification standards for commodities, to provide grading and certification services upon request, and to recover the cost of the requested services. DATCP has authority, under s. 100.20, Stats., to prohibit unfair and deceptive business practices.

Under s. 93.06 (11), Stats., DATCP may cooperate with other entities and appoint agents for the administration of programs under its jurisdiction. DATCP administers the certified seed potato program pursuant to this rule and a memorandum of understanding with the college.

DATCP has delegated authority to the college to inspect and certify seed potatoes for disease risk. The college may charge fees to cover the college's costs of inspection and certification. Certification decisions by the college may be subject to administrative review by DATCP, as provided in this rule.

DATCP grades seed potatoes, once they are certified by the college. A person may not sell potatoes as Wisconsin certified seed potatoes unless the potatoes are certified by the college and graded by DATCP.

### ***Background***

Wisconsin is one of the nation's largest potato producing states. Wisconsin's certified seed potato program helps Wisconsin's potato industry, by maintaining the quality and disease-free reliability of seed potatoes. Commercial potato growers can rely on the seed potatoes they purchase. Seed potato growers can market their seed potatoes more effectively, because buyers can purchase with confidence. Certification helps prevent the spread of serious and potentially devastating potato diseases, and facilitates the movement of seed potatoes in interstate and international commerce.

#### **Participation is Voluntary**

Seed potato certification and grading is voluntary, and is done at the request of the seed potato grower. Yet most Wisconsin potatoes are grown from certified seed, because certification helps buyers and sellers alike.

At the request of a seed potato grower, the college inspects seed potatoes for diseases and other conditions. The college then certifies the seed potatoes in appropriate categories based on predicted disease-free reliability. DATCP inspects and grades college-certified seed potatoes for other measures of quality. A grower may not sell potatoes as certified seed potatoes unless the potatoes have been certified by the college and graded by DATCP.

Seed potatoes are labeled with their certification and grade classifications, so that buyers know what they are getting. Certification and grade classifications affect purchase decisions and sale prices. DATCP and the college charge fees to cover the cost of requested grading and certification services.

#### **The Certification Process**

DATCP rules specify standards and procedures for seed potato certification and grading. Current rules are contained in ch. ATCP 156, Wis. Adm. Code. Historically, the college has provided disease-free propagative material used to grow multi-generational lines of certified seed potatoes in this state.

Seed potato growers plant propagative material provided by the college, and harvest the seed potatoes. Harvested seed potatoes may be sold to commercial growers, or replanted to produce subsequent generations of seed potatoes. If the seed potatoes are certified by the college (and graded by DATCP), they may be sold as *certified seed potatoes* (normally at a higher price). If they are certified as "foundation" seed potatoes, they may be replanted to produce subsequent generations of *certified seed potatoes*.

With each generation of planting in the field, the disease-free reliability of the seed potatoes (and hence their certification classification) is reduced. After a certain number of generations, seed potatoes may no longer be used as "foundation" seed potatoes to produce other certified seed potatoes. However, a seed potato grower may start a new line of certified seed potatoes, using new disease-free propagative material provided by the college or a comparable source.

As part of the certification process, the college samples and inspects growing and harvested seed potatoes. The college also conducts follow-up evaluations of potatoes grown from the certified "lot." The college looks for diseases of concern. The college may not certify a seed potato "lot" if samples from that "lot" fail to meet minimum disease standards.

If a "lot" meets minimum disease standards, the college assigns a classification code based on generation (with each year of field planting the classification drops one level, reflecting increased disease risk). Each "lot" is labeled with its assigned classification code.

Once the college has certified seed potatoes, and assigned a disease-risk classification, DATCP may grade the potatoes based on various quality factors. DATCP visually inspects samples of potatoes drawn from the graded "lot," and grades the "lot" according to DATCP rules. Each graded "lot" is labeled with its assigned grade.

#### **Rule Changes Needed**

In recent years, there has been increased demand for rapid introduction of new potato varieties, often from out-of-state sources. Biotechnology has expanded disease-testing options, and has facilitated the creation of new potato varieties and new forms of propagative material. There has been increased cooperation between states, aimed at standardizing seed potato certification.

These developments have not replaced the traditional certification program based on college propagative material, field inspection and "limited-generation" plantings. However, they do require some program changes and adaptations.

This rule provides a clearer, more up-to-date framework for the seed potato certification program administered by the college. Among other things, this rule:

- Clarifies and, in some cases, changes current certification standards and procedures.
- Eliminates some outdated requirements, and strengthens some disease-control standards.
- Recognizes new laboratory testing capabilities.
- Expands the number of sources from which growers may obtain propagative material for certified seed potatoes, while minimizing disease risk.
- Allows for variances in certification standards to accommodate unusual situations.
- Clarifies how propagative material is regulated.

This rule does not substantially alter current standards or procedures for DATCP quality inspection of seed potatoes. However, it clarifies the respective roles of DATCP and the college, and spells out grading standards and procedures with greater clarity.

#### **Rule Coverage**

This rule applies to seed potato growers who wish to produce and sell *certified seed potatoes* (participation is voluntary, and there is nothing to prohibit sales of uncertified seed potatoes). It also applies to laboratories and greenhouses that provide propagative material used to grow certified seed potatoes. This rule does *not* apply to any of the following:

- Producers who grow potatoes only for consumption, and not for seed.
- Producers who grow potatoes for seed, but do not wish to have their seed potatoes certified and graded (participation is voluntary).
- Home gardens.

#### **Rule Contents**

##### **Rule Reorganization**

This rule reorganizes current rules into subchapters. This clarifies the distinction between certification by the college and grading by DATCP. This rule also redrafts the current rules, so they will be easier to read and understand.

##### **Certification Procedure**

This rule clarifies the procedure by which a seed potato grower may apply for and obtain certification of seed potatoes. Among other things, it clarifies the information that the grower must include on the application form, and the information that the college must include in the certification. This will make it easier for the college to process certification

requests, and document certifications. It will also provide a better certification history and record, which is important for certification credibility, disease control and future certification.

Under this rule, if an applicant seeks certification of a protected (patented) variety of seed potatoes, the application must document that the applicant has permission to grow the protected variety. This is consistent with requirements under federal law.

Under this rule, as under current rules, the college may certify a “lot” of seed potatoes at the request of the seed potato grower. This rule clarifies that a “lot” includes all potatoes of the same variety and line that are grown from the same source seed on the same farm in the same year. Certification does not constitute a warranty by the college, and does not extend to any disease or condition that cannot be observed by visual inspection.

#### Certification Standards: General

This rule clarifies minimum standards for the certification of seed potatoes, including standards for all of the following:

- Propagative material used to grow the certified seed potatoes.
- Field planting.
- Field and harvest inspections.
- Post-harvest testing.

#### Propagative Material.

This rule expands the number of sources from which growers may obtain propagative material for certified seed potatoes, while minimizing disease risk. Under this rule, certified seed potatoes must be grown from one of the following (no other propagative materials may be planted on a farm producing certified seed potatoes):

- Certified “foundation” seed potatoes produced, on the same farm, by the producer requesting certification.
- Certified “foundation” seed potatoes produced on another farm, if pre-approved by the college.
- Propagative material produced by the college.
- “Foundation” seed potatoes certified by another state, under standards equivalent to the standards in this rule, if pre-approved by the college.
- Propagative material produced in an approved laboratory or greenhouse (see below), if pre-approved by the college.
- Propagative material produced by a recognized breeding program and pre-approved by the college.

#### Field and Harvest Inspection.

Under this rule, as under the current rules, the college must conduct *field and harvest inspections* of certified seed potatoes. The college must visually inspect a representative sample of growing potato plants, and a representative sample of harvested potatoes. The college must inspect for specified diseases and conditions, including leafroll, mosaics, spindle tuber, bacterial ring rot and variety mixture.

Under this rule, as under the current rules, the college must reject an entire “lot” of potatoes for certification if inspection samples exceed specified tolerances for the relevant diseases or conditions. This rule makes the following key changes to current tolerances, to make them more consistent with tolerances in other states:

- It specifies a *zero tolerance* for spindle tuber (which currently has a positive tolerance, but has not been detected for several decades).
- It increases (slightly) the current tolerance for variety mixture.

Field and harvest inspection tolerances, as revised by this rule, are shown in *Table 1*:

**Table 1**  
**Field and Harvest Inspection Standards**

Condition	1 <sup>st</sup> Field Inspection	Subsequent Field or Harvest Inspections	
		Foundation Seed Potatoes	Other Seed Potatoes
Leafroll	1.5%	0.25%	1.0%
Mosaics	2.0%	0.25%	1.0%
Spindle tuber	0.0%	0.0%	0.0%
Total leafroll and mosaics	3.0%	0.25%	2.0%
Bacterial ring rot	0.0%	0.0%	0.0%
Variety mixture	1.0%	0.1%	0.1%

#### “Foundation” Seed Potatoes: Supplementary Standards.

This rule, like the current rules, specifies higher standards for the certification of “foundation” seed potatoes (which may be used to grow other *certified* seed potatoes, not just commercial potatoes or uncertified seed potatoes). “Foundation” seed potatoes are subject to more rigorous disease tolerances (see *Table 1* above and *Table 2* below), and more rigorous inspection and control for bacterial ring rot (see below). The college may not certify “foundation” seed potatoes until it has completed its post-harvest testing of the potatoes (see below).

#### Bacterial Ring Rot.

The current rules and this rule specify a *zero tolerance* for bacterial ring rot. Under the current rules and this rule, the college must reject for certification any “lot” of seed potatoes in which bacterial ring rot is found. The college may certify other lots on the same farm, but not as “foundation” class seed. The farm must produce 2 annual crops free of bacterial ring rot before the college can again certify “foundation” class seed from that farm. There is no exception to this requirement.

Under current rules, if bacterial ring rot is found in 2 “lots” from the same farm within 3 years, the college may not certify any other “lots” from that farm (regardless of whether bacterial ring rot is actually found in those “lots”). This rule allows the college to certify the other “lots,” but not as “foundation” seed (until the farm produces 2 annual crops free of bacterial ring rot).

#### Post-Harvest Test.

Under current rules and this rule, the college must conduct a *post-harvest test* on every “lot” of certified seed potatoes. The college may not certify a “lot” that fails a post-harvest test, except that in some cases this rule allows certification based on lab testing (see below).

To conduct a post-harvest test, the college collects a sample of potatoes from the “lot” to be certified, and plants those potatoes in a winter growing location. The college then inspects the potatoes grown in the winter location for disease and variety mixture. The inspection must show compliance with specified tolerances (this rule revises some of the current tolerances). The tolerances (as revised by this rule) are shown in *Table 2*:

**Table 2**  
**Post-Harvest Test Standards**

Condition	Foundation seed potatoes	Other certified seed potatoes
Leafroll	0.5%	5.0%
Mosaics	0.5%	5.0%
Spindle tuber	0.0%	0.0%
Total leafroll and mosaics	0.5%	5.0%
Bacterial ring rot	0.0%	0.0%
Variety mixture	0.25%	2.0%

This rule allows for greater use of laboratory testing in lieu of traditional post-harvest testing. Under this rule, the college may certify a “lot” of seed potatoes that passes field and harvest inspection, regardless of any post-harvest testing, if laboratory testing by the college shows that the “lot” meets the post-harvest test standards in *Table 2*.

Variance Allowed by the College

Under this rule, the college may certify a “lot” of seed potatoes that fails to comply with applicable tolerances in *Table 1* or *Table 2*, if the college documents all of the following:

- Special conditions justify the certification, and there is a reasonable likelihood that the next generation of seed potatoes grown from the non-complying lot will meet applicable tolerances.
- No bacterial ring rot has been found in the lot.
- The certification will not jeopardize seed potato quality, or pose a significant risk of harm to the potato industry or consumers.
- The certified seed potatoes will not be planted on any farm other than the farm where they are produced.

Classifying Certified Seed Potatoes

Under current rules and this rule, the college gives each “lot” of certified seed potatoes a classification number based on generation (with each year of field planting the classification drops one level, reflecting increased disease risk). Under current rules, seed potatoes may be certified for 5 generations (4 generations as “foundation” seed), except that “Elite” seed potatoes produced by the college may be certified for up to 7 generations (6 generations as “foundation” seed).

This rule allows certification for up to 7 generations (6 generations as “foundation” seed), and eliminates the separate classification of “Elite” seed. This will make Wisconsin’s classification system more consistent with the system in other states. The new classification system is shown below (FY1 is the highest classification):

Under this rule, the college may authorize a seed potato grower to use experimental propagative material from a breeding farm. This makes it possible for growers to experiment with new varieties. However, seed potatoes grown from the experimental material may be certified for only 3 generations (“Ex5 Foundation,” “Ex6 Foundation” and “Certified”), not 7 generations.

**Table 3**  
**Classification**

Year of Field Propagation on Seed Potato Farm (Generation)	Standard Classification	Experimental* Classification
1	FY1 Foundation	Ex5 Foundation
2	FY2 Foundation	Ex6 Foundation
3	FY3 Foundation	Certified**
4	FY4 Foundation	
5	FY5 Foundation	
6	FY6 Foundation	
7	Certified**	

\* Applies to lines of seed potatoes grown from experimental field-grown propagative material from recognized breeding programs.

\*\* “Certified” (non-foundation) class seed may not be replanted to produce other certified seed potatoes, but may be used to produce commercial potatoes or uncertified seed potatoes.

Under this rule, “foundation” seed potatoes certified by another state have the same classification assigned by that state, provided that the other state certifies seed potatoes under standards equivalent to the standards in this rule. If the other state does not provide field year information, the seed will be classified as FY5.

Once for each line of certified seed potatoes, the college may renew a classification by doing one of the following (contrary to the normal classification progression):

- The college may classify, as “FY5” rather than “certified,” certified seed potatoes produced from seed potatoes classified as “FY6.”
- The college may classify, as “Ex5” rather than “certified,” certified seed potatoes produced from seed potatoes classified as “Ex6.”

A seed potato grower seeking such a renewal must show that the seed potatoes meet the standards for the renewed classification. The college may require verification in the form of laboratory testing. “Tuber unit planting” is no longer required, in order to qualify for a renewal classification, because most seed potato growers no longer have the necessary equipment.

Approved Laboratories and Greenhouses

Historically, the college has provided disease-free propagative material used to grow lines of certified seed potatoes in this state. But in recent years, there has been increased demand for new potato varieties, often from out-of-state sources.

This rule expands the sources from which a seed potato grower may obtain propagative material used to start a line of certified seed potatoes. However, this rule includes safeguards to prevent the introduction of disease, and to maintain the credibility of the certification process.

This rule allows a seed potato grower to obtain propagative material from, among other places, a laboratory or greenhouse approved by the college. “Propagative material” may include tissue culture plantlets, microtubers, minitubers or tubers that are produced under rigorous laboratory or greenhouse conditions to ensure that they are free of disease.

The college may approve a laboratory or greenhouse in this state if all of the following apply:

- The college inspects the laboratory or greenhouse before granting approval, and at least annually after granting approval. The college must also inspect minitubers, if any, produced by a greenhouse.

- The laboratory or greenhouse uses testing, propagation, isolation and sanitation procedures equivalent to those used by the college.
- The laboratory or greenhouse operator does all of the following:
  - Applies to the college for approval, and provides information reasonably required by the college for purposes of evaluation and approval.
  - Agrees to pay the college's reasonable costs to inspect, evaluate and approve the laboratory or greenhouse.
  - Keeps complete records of laboratory or greenhouse operations, and of propagative material produced by the laboratory or greenhouse. The operator must make the records available to the college upon request.
  - Labels propagative material as directed by the college, consistent with this rule.

The college may approve a laboratory or greenhouse in another state if the seed potato certification agency in the other state approves that laboratory or greenhouse for the same purpose, using standards and procedures that are equivalent to the standards and procedures that the college uses to approve in-state laboratories and greenhouses under this rule.

#### Storing, Shipping and Handling Certified Seed Potatoes

This rule spells out basic standards for storing, shipping and handling certified seed potatoes, to prevent disease contamination. This rule modernizes current standards. For example, this rule eliminates the current requirement that "foundation" seed potatoes be shipped in bags (it allows bulk shipments) and addresses shipment in totes. This rule also eliminates the current requirement that bags or trucks be sealed with a metal seal.

#### Misrepresentation

Under this rule, no person may do any of the following:

- Sell or represent potatoes as certified seed potatoes unless they are certified, graded and labeled under this rule, or by another state under standards equivalent to those in this rule.
- Sell or represent potatoes as Wisconsin certified seed potatoes unless they are certified by the college and graded by DATCP under this rule.
- Misrepresent the terms, conditions or basis for any seed potato certification.

The college may withdraw certification if a seed potato seller misrepresents the terms of the certification. DATCP may also prosecute fraudulent misrepresentations in court. Buyers who suffer monetary loss because of fraudulent misrepresentations have a private remedy for double damages, court costs and attorney fees.

#### Review of College Actions

Current rules provide no mechanism by which a seed potato grower may seek review of an adverse certification decision by the college. Under this rule, a seed potato grower may request an informal meeting with the college to review an adverse decision. The college must hold the informal meeting within 30 days, unless the requester agrees to a later date. The meeting may be held by telephone.

If the matter is not resolved after the informal meeting with the college, the seed potato grower may request a contested case hearing before DATCP. DATCP may reverse, modify or remand a decision of the college if DATCP finds that the decision is contrary to this rule. However, DATCP may not reverse, modify or remand a matter that this rule leaves to the discretion of the college.

#### Seed Potato Grading by DATCP

This rule clarifies, but does not substantially alter, the standards for DATCP grading of seed potatoes certified by the college. This rule prohibits misrepresentations of grade. This rule describes the current mechanism by which a person adversely affected by a DATCP grading decision may request a contested case hearing.

#### **Fiscal Estimate**

This rule will not have a significant fiscal impact on DATCP or the college. This rule will not affect local units of government. A complete fiscal estimate is attached.

#### **Business Impact**

This rule applies to seed potato growers who wish to produce and sell *certified* seed potatoes (participation is voluntary, and there is nothing to prohibit sales of uncertified seed potatoes). It also applies to laboratories and greenhouses that provide propagative material used to grow certified seed potatoes. Many of these businesses may qualify as "small businesses."

This rule does *not* apply to any of the following:

- Producers who grow potatoes only for consumption, and not for seed.
- Producers who grow potatoes for seed, but do not wish to have their seed potatoes certified and graded (participation is voluntary).
- Home gardens.

This rule will assist the Wisconsin potato industry, including seed potato growers. This rule is not expected to have any significant adverse impact on seed potato growers or other sectors of the Wisconsin potato industry. Participation is voluntary.

This rule modernizes Wisconsin's certified seed potato rule to address changing industry practices and standards. Among other things, this rule:

- Clarifies current certification standards and procedures.
- Allows seed potato growers to obtain propagative material from a wider array of sources. This will help satisfy emerging demands for rapid introduction of new potato varieties, often from out-of-state sources. This rule includes safeguards to ensure that seed potatoes from these sources are not diseased. Laboratories and greenhouses producing propagative material must be approved by the college, and the college must pre-approve propagative material before growers in this state plant the propagative material to produce certified seed potatoes.
- Provides for more targeted response to findings of bacterial ring rot. This rule provides continued strong protection against bacterial ring rot, but reduces the threat of devastating business losses to seed potato growers.
- Updates current disease tolerances, to reflect current interstate and international standards. The college may also grant written variances for individual lots if special conditions justify the variance, and if the college finds that the variance does not create a risk of harm to other potato producers, to the potato industry, or to consumers.
- Provides for certification reciprocity between states. Seed potatoes certified in another state may be sold as certified seed potatoes in Wisconsin, provided that the other state reciprocates, and provided that the other state applies certification standards and procedures that are equivalent to those applied in Wisconsin. Seed potatoes certified in another state may not be represented as Wisconsin certified seed potatoes, and must be labeled to show certification in another state.
- Modernizes requirements for certified seed potato labeling, shipping and handling.

- Provides a mechanism by which a seed potato grower may obtain informal and formal review of an adverse certification decision by the college.

- Prohibits fraudulent sales of uncertified seed as certified seed.

This rule makes minor changes related to certification application, certification procedure, recordkeeping, and certified seed potato handling and labeling. However, none of these changes will have a significant adverse impact on potato growers.

Because this rule has no significant adverse impact on small business, it is not subject to the delayed small business effective date provided in s. ATCP 227.22(2)(e), Stats. DATCP has not incorporated a small business enforcement policy in this rule, pursuant to 2003 Wis. Act 145, because participation in the seed potato certification program is voluntary. DATCP has proposed a separate rule related to the exercise of enforcement discretion under all of its rules.

### Environmental Impact

This rule will have no significant environmental impact, compared to current rules. This rule, like the current rules, will help to prevent the introduction and spread of serious potato diseases in this state. No environmental impact statement is required.

### Federal Programs

There are no comparable federal programs related to the certification of seed potatoes. The United States department of agriculture, animal and plant health inspection service, is currently developing a proposed memorandum of understanding with states to standardize seed potato certification between states, and to ensure that certification meets minimum standards. This rule is consistent with the proposed memorandum of understanding.

### Surrounding State Programs

Michigan. Michigan recently changed its seed potato certification rules. The changes make the Michigan rules more consistent with Wisconsin rules. Conversely, this rule will also make Wisconsin rules more consistent with Michigan rules. For example:

- Michigan's rule allows variances from certification standards for good cause (such as a statewide shortage of certified seed potatoes). This rule will allow the college to grant similar variances.

- Michigan's rule has a zero tolerance for potato spindle tuber. This rule also specifies a zero tolerance for spindle tuber.

- Michigan's rule does not require certified "foundation" seed to be shipped in bags (it allows bulk shipments). This rule also allows bulk shipments, and eliminates the current bagging requirement in Wisconsin.

Minnesota. Minnesota's seed potato certification rule is similar to Wisconsin's. But unlike Wisconsin, Minnesota also restricts the planting of uncertified seed potatoes. The Minnesota rules prohibit a person from planting more than 10 acres of uncertified seed potatoes unless those seed potatoes have passed a field inspection. The field inspection must show compliance with disease standards similar to those that apply to certified seed potatoes (among other things, the potatoes must be free of ring rot).

This rule will make Wisconsin rules more consistent, in certain areas, with Minnesota rules. For example:

- Minnesota's rule allows variances from certification standards for good cause (such as a statewide shortage of

certified seed potatoes). This rule will allow the college to grant similar variances.

- Minnesota's rule has a zero tolerance for potato spindle tuber. This rule also specifies a zero tolerance for spindle tuber.

- Minnesota's rule does not require certified "foundation" seed to be shipped in bags (it allows bulk shipments). This rule also allows bulk shipments, and eliminates the current bagging requirement in Wisconsin.

- Minnesota's rule provides for a more targeted response to bacterial ring rot findings. This rule adopts a similar approach in Wisconsin.

- Minnesota's rule allows growers to apply for certification of protected varieties, if they have permission to grow those varieties (the rule does not otherwise regulate the planting of protected varieties). This rule takes a similar approach.

Indiana, Illinois & Iowa. Indiana, Illinois and Iowa do not produce seed potatoes and do not have seed potato certification rules.

### DATCP and UW Contacts

Questions and comments related to this rule may be directed to the following persons:

#### Comments for the Hearing Record:

Department of Agriculture, Trade and Consumer Protection

P. O. Box 8911, Madison, WI 53708-8911

Attn: Kevin LeRoy

Telephone: (608) 224-4928

E-mail: [Kevin.Leroy@datcp.state.wi.us](mailto:Kevin.Leroy@datcp.state.wi.us)

#### Other Questions or Comments:

Department of Plant Pathology  
University of Wisconsin-Madison  
1630 Linden Dr.

Madison, WI 53706

Attn: Dr. Amy Charkowski, Assistant Professor  
(Administrative Director)

Telephone: (608) 262-7911

E-mail: [Amy.Charkowski@plantpath.wisc.edu](mailto:Amy.Charkowski@plantpath.wisc.edu)

## Notice of Hearing

### Agriculture, Trade and Consumer Protection

The Department of Agriculture, Trade and Consumer Protection announces that it will hold a public hearing on an emergency rule relating to mobile air conditioner refrigerant and repairs. This emergency rule authorizes the sale of mobile air conditioner refrigerant R 134A in containers holding less than 15 lbs. of the refrigerant. Mobile air conditioners include car and other motor vehicle air conditioners.

DATCP will hold one hearing at the time and place shown below. DATCP invites the public to attend the hearing and comment on the emergency rule. Following the public hearing, the hearing record will remain open until Friday, **August 25, 2006**, for additional written comments. Comments may be sent to the Division of Trade and Consumer Protection at the address below or by e-mail to [Michelle.Reinen@datcp.state.wi.us](mailto:Michelle.Reinen@datcp.state.wi.us).

You may obtain a free copy of this rule by contacting the Wisconsin Department of Agriculture, Trade and Consumer Protection, Division of Trade and Consumer Protection, 2811 Agriculture Drive, P.O. Box 8911, Madison, WI 53708. You can also obtain a copy by calling (608) 224-5160 or emailing [Michelle.Reinen@datcp.state.wi.us](mailto:Michelle.Reinen@datcp.state.wi.us). Copies will also be available at the hearings. To view the proposed rule online, go to:

<https://apps4.dhfs.state.wi.us/admrules/public/Home>

To provide comments or concerns relating to small business, please contact DATCP's small business regulatory coordinator Keeley Moll at the address above, by emailing to Keeley.Moll@datcp.state.wi.us or by telephone at (608) 224-5039.

Hearing impaired persons may request an interpreter for the hearing. Please make reservations for a hearing interpreter by August 5, 2006, by writing to Michelle Reinen, Division of Trade and Consumer Protection, P.O. Box 8911, Madison, WI 53708-8911, telephone (608) 224-5160. Alternatively, you may contact the Department TDD at (608) 224-5058. Handicap access is available at the hearing.

### Hearing Date and Location

Tuesday, **August 15**, 10 a.m. to 12 p.m.

Department of Agriculture, Trade and Consumer Protection

2811 Agriculture Drive, Board Room

Madison, WI 53708

Handicapped accessible

### Analysis Prepared by the Department of Agriculture, Trade and Consumer Protection

This emergency rule amends ss. ATCP 136.10 (1) and (2), and creates s. 136.10 (2m), to permit the sale of mobile air conditioner refrigerant R 134A in containers holding less than 15 lbs. of the refrigerant.

Statutory Authority: ss. 93.07 (1) and 100.45 (5), Stats.

Statute Interpreted: s. 100.45 (5), Stats.

The Department of Agriculture, Trade and Consumer Protection ("DATCP") has broad general authority to adopt rules interpreting statutes under its jurisdiction (*see* s. 93.07(1), Stats.). DATCP is specifically authorized to adopt rules to administer s. 100.45, Stats., related to mobile air conditioner refrigerant and repairs.

#### Current Rules

DATCP is responsible for the administration and enforcement s. 100.45, Stats., related to mobile air conditioner refrigerant and repairs. Mobile air conditioners include car and other motor vehicle air conditioners. DATCP has adopted rules, under ch. ATCP 136, to implement s. 100.45, Stats.

The current law and rules are designed to prevent the release, into the environment, of mobile air conditioner refrigerant that may deplete atmospheric ozone and cause other environmental damage. The current law and rules are based, in part, on federal regulations administered by the United States environmental protection agency.

Under current rules, businesses that repair mobile air conditioners must be registered by DATCP, and repair technicians must complete required training. Repair shops may not add refrigerant to a leaking mobile air conditioner without repairing the air conditioner, and must use proper equipment and methods to avoid releasing refrigerant.

Current rules prohibit the sale of mobile air conditioner refrigerant to persons other than registered installers. Current rules prohibit the sale of refrigerant in small "do-it-yourself" containers holding less than 15 lbs. of refrigerant.

Current DATCP rules apply to federally-designated class I and class II ozone depleting refrigerants, as well as "substitute" refrigerants. Federal rules regulate the *installation* of mobile air conditioner refrigerants, including "substitute refrigerants," but do not regulate the *sale* of substitute refrigerants.

JCRAR Action

On June 28, 2006, the Legislature's Joint Committee for Review of Administrative Rules (JCRAR) voted to suspend all current state rules related to the installation and sale of "substitute refrigerants" of any kind. This broad exemption will become effective unless DATCP adopts a narrower alternative exemption by emergency rule.

The narrower exemption specified by JCRAR would apply to the sale of one type of "substitute refrigerant" known as R 134A. The exemption would allow the sale of R 134A to the general public in "do-it-yourself" containers holding less than 15 lbs. R 134A is currently the most widely used mobile air conditioner refrigerant. It is not considered an ozone-depleting substance, but is considered an environmental contaminant that contributes to global warming.

Consumers who purchase R 134A in "do-it-yourself" containers will presumably use it to refill their leaking mobile air conditioners which, in most cases, will continue to leak refrigerant to the environment. Consumers are not generally trained or equipped to repair air conditioner leaks, or to prevent the release of refrigerant into the environment.

DATCP is adopting this emergency rule for the sole purpose of preventing a broader suspension of rules that currently prevent the release of mobile air conditioner refrigerant into the environment.

### Fiscal Impact

This rule will have no fiscal impact on local government and will have no new impact on DATCP.

#### Business Impact

This rule will benefit manufacturers and sellers of R 134A, who will be able to sell the refrigerant in "do-it-yourself" containers holding less than 15 lbs. of the refrigerant. Sellers will likely include major consumer retail chains.

This rule will adversely affect motor vehicle repair shops and mobile air conditioner repair shops, who have invested in equipment and training to repair leaking mobile air conditioners and prevent refrigerant leaks to the environment.

It is likely that many consumers will use the "do-it-yourself" containers to refill their leaking mobile air conditioners, without repairing the leaks or taking precautionary measures to prevent release of refrigerant into the environment. This will likely reduce business for registered commercial repair shops and installers.

### Federal and Surrounding State Programs

#### Federal Programs

Federal law currently regulates the commercial repair of mobile air conditioners, and the commercial installation of mobile air conditioner refrigerant. There is no federal regulation of refrigerant *sales*. This rule will have no impact on federal programs.

#### Surrounding State Programs

No other state prohibits the sale of R 134A mobile air conditioner refrigerant in "do-it-yourself" containers of less than 15 lbs. This rule will make Wisconsin consistent with other states.

### DATCP Contact

Questions and comments related to this rule may be directed to:

Michelle Reinen

Department of Agriculture, Trade and Consumer Protection

P.O. Box 8911

Madison, WI 53708-8911

Telephone (608) 224-5160

E-Mail: michelle.reinen@datcp.state.wi.us

**Notice of Hearings  
Emergency Management  
[CR 06-088]**

NOTICE IS HEREBY GIVEN that pursuant to the authority in ss. 166.02 (6u), 166.03 (2) (b) 9., 227.11 (2) (a),

Stats. and interpreting ss. 20.465 (3) (b), 20.465 (3) (b) (s), 166.02 (6u), 166.03 (2) (b) 9., Stats., the Division of Emergency Management will hold public hearings at the times and places indicated below to consider the creation of ch. WEM 7, as an emergency rule and a permanent rule, relating to the application process and criteria for determining eligibility for payments to local units of government for damages and costs incurred for major catastrophes. The public hearings will be held as follows:

<b>Date</b>	<b>Location</b>	<b>Begin Time</b>
Mon. Aug. 14	<b>Milwaukee Area</b> Lecture Hall A & B, Milwaukee County Sheriff's Training Academy 9225 S. 68th St, Franklin, WI 53132	10:00 a.m.
Mon. Aug. 14	<b>Appleton Area</b> Grand Chute Town Hall Board Room 1900 Grand Chute Blvd. Appleton WI 54913	6:30 p.m.
Tues. Aug. 15	<b>Madison</b> Emergency Operations Center (EOC) Department of Military Affairs 2400 Wright Street Madison WI 53707	10:00 a.m.
Tues. Aug. 15	<b>LaCrosse</b> Health and Human Services Building Auditorium 300 4 <sup>th</sup> Street North LaCrosse WI 54601	6:30 p.m.
Wed. Aug. 16	<b>Wausau area</b> Rib Mountain Town Hall, 3700 North Mountain Road Rib Mountain, WI 54401	6:30 p.m.
Thur. Aug. 17	<b>Rice Lake area</b> Barron County Justice Center Emergency Operations Center 1420 State Hwy 25 N Barron WI 54812	6:30 p.m.

Interested persons are invited to present information at the hearing. Persons appearing may make an oral presentation but are urged to submit facts, opinions and arguments in writing as well. Facts, opinions and arguments may also be submitted in writing without a personal appearance by mail address to Diane J. Kleiboer, Disaster Resources Supervisor, Wisconsin Emergency Management; 2400 Wright Street, Room 213, P.O. Box 7865, Madison, WI 53708-7865. Telephone: (608) 242-3200. Email: diane.kleiboer@dma.state.wi.us. Written comments must be received by August 17, 2006 to be included in the record of rule making proceedings.

The hearing sites are fully accessible to persons with disabilities.

**Analysis Prepared By the Division of Emergency Management**

The Wisconsin Department of Military Affairs, through its Division of Emergency Management, proposed an order to create WEM 7 relating to the application process and criteria for determining eligibility for payments to local units of government for damages and costs incurred for major catastrophes.

Statutory Authority: ss. 166.03 (2) (b) 9., and 227.11 (2) (a), Stats.

Statutes Interpreted: s. 166.03 (2) (b) 9.

Explanation of Agency Authority: The Department of Military Affairs, through its Division of Emergency Management, is required under s. 166.03 (2) (b) 9 (created by 2005 Wisconsin Act 269) to promulgate and adopt rules to administer the payment program to local units of government for specific costs related to emergency response and recovery.

Related Rule of Statute: There are no other related statutes or rules other than those listed above.

Plain Language Analysis: Chapter WEM 7 establishes an application process and eligibility criteria for payments to local units of government for specific costs related to emergency response and recovery efforts. These would be costs that cannot be insured or that are impossible to predict based on the unique nature of the disaster response. These costs include debris removal, emergency protective measures taken to eliminate or reduce immediate threats to life, public health or safety or damages to roads or bridges.

Summary of and Comparison With, Existing or Proposed Federal Regulations: The federal Public Assistance Program (44 CFR part 206, Subparts G and H), made available in a Presidential Disaster Declaration, and the major disaster assistance program as provided for in WEM 7 are similar. Both programs provide grants to local governments that have sustained damages or incurred costs as a result of a major disaster. Each also has a cost share provision; the federal public assistance program is 75% federal with the remaining 25% split between the state and local applicant while the state program cost share is 70/30, state/local. The eligibility criteria for the state program resemble those of the federal program, specifically as they pertain to debris clearance, emergency protective measures and damage to road systems. The administrative and management processes for the state program will be patterned after those of the federal public assistance program and will be documented in a State Administrative Plan. For both programs the actual amount paid to an applicant is determined by the applicant's ability to submit appropriate documentation justifying the claimed costs.

Comparison with Rules in Adjacent States: The Division is unaware of any proposed or existing federal regulation that is covered by the proposed rule.

Summary of Factual Data and Analytical Methodologies: The Division reviewed records of disaster occurrences from 2000 through 2005 and determined that, on average, there were three to five disaster occurrences each year that did not qualify for federal disaster assistance, but placed a substantial financial burden on the impacted jurisdictions. In these disasters, the majority of public assistance costs were for debris removal, emergency protective measures and damage to road systems. The Division also took into account the established federal threshold for the state to qualify for the federal public assistance program made available in a Presidential Disaster Declaration.

Effect on Small Business: The proposed rule will have no significant effect on small business, as defined in s. 227.114 (1), Stats. There were no supporting documents used to determine the effect on small business and an economic impact report was not prepared. This rule will affect only local units of government.

### Fiscal Estimate

In the current biennium the program is funded with PECFA SEG funds. In the next biennium budget an alternate source of funding will be needed. It is assumed that approximately \$3 million in damages and costs may be eligible for payment under the major disaster assistance fund. The increased workload will be significant but the agency will have to make do with current staff. Additional costs for supplies and services will likewise have to be absorbed within the agency's existing budget.

### Agency Contact Person

Diane Kleiboer, Supervisor, Disaster Recovery Section, Wisconsin Emergency Management, 2400 Wright Street, P. O. Box 7865, Madison, WI 53707-7865. Telephone: 608-242-3200. Email: diane.kleiboer@dma.state.wi.us.

Place Where Comments Are to Be Submitted and Deadline for Submission: Comments may be submitted to Diane Kleiboer, Supervisor, Disaster Recovery Section, 2400 Wright Street, P. O. Box 7865, Madison, WI 53707-7865. Telephone: 608-242-3200. Email: diane.kleiboer@dma.state.wi.us. Comments must be received on or before August 17, 2006 to be included in the record of rule-making proceedings.

### Rule of the Text

SECTION 1.	Chapter WEM 7 is created to read:
WEM 7.01	Purpose
WEM 7.02	Definitions
WEM 7.03	Eligibility Criteria
WEM 7.04	Application Process
WEM 7.05	Eligible and Ineligible Costs
WEM 7.06	Payments of Major Disaster Assistance Fund Applications
WEM 7.07	Expedited Claims and Payment Process
WEM 7.08	Record Retention
WEM 7.09	Fund Expenditure Limitation
WEM 7.10	Dual Payment
WEM 7.11	Appeal Process

7.01 PURPOSE. The purpose of this chapter ~~section~~ is to establish the application process and the criteria for determining eligibility for payment under the major disaster assistance fund as required in ss. 166.03 (2) (b) 9., Stats.

7.02 DEFINITIONS. In this chapter:

(1) "Administrator" means the administrator of the Wisconsin division of emergency management.

(2) "Applicant" means any local governmental unit that applies for major disaster assistance funding under this chapter.

(3) "Applicant's authorized representative" means any person authorized by the governing body of a local governmental unit to apply for major disaster assistance funding under this chapter.

(4) "County" means the county or counties where a major catastrophe has occurred.

(5) "Department" means the Wisconsin department of military affairs.

(6) "Disaster declaration" means a document by which an authorized official or the governing body of a local governmental unit or the State declares a disaster.

(7) "Division" means the Wisconsin division of emergency management.

(8) "Incident period" means the definite time interval of a major catastrophe with a specific start and end date.

(9) "Local governmental unit" has the meaning given in 19.42 (7u), Stats.

(10) "Major catastrophe" has the meaning given in s. 166.02 (6u), Stats.

(11) "State" means the state of Wisconsin.

### 7.03 ELIGIBILITY CRITERIA.

(1) The division may make payments to eligible local governmental units under this chapter upon receipt and consideration of an application if the administrator determines all of the following:

(a) The local governmental unit has suffered a major catastrophe.

(b) A disaster declaration was issued by the local governmental unit or the state during the incident period of the major catastrophe.

(c) The damages suffered and eligible costs incurred are the direct result of a major catastrophe.

(d) Federal disaster assistance is not available for that major catastrophe because the governor's request that the president declare the catastrophe a major disaster under 42 USC 5170 has been denied or where no federal assistance is requested because the major catastrophe does not meet the

statewide or countywide per capita impact indicator under the public assistance program guidelines issued by the federal emergency management agency.

(e) The local governmental unit will contribute at least 30% of the total amount of the damages and eligible costs incurred from the major catastrophe from other funding sources.

(2) In making a determination under sub (1), the administrator shall consider all of the following:

(a) The availability of funding from other federal and state government sources.

(b) The availability of insurance.

(c) Any other factors the administrator considers relevant.

**7.04 APPLICATION PROCESS.** (1) The division shall prepare application materials which may be updated as needed. The application materials shall set forth the application instructions and requirements for funding under this chapter.

Note: Application materials are available on request without charge from the Disaster Resources Section Supervisor, Wisconsin Emergency Management, 2400 Wright Street, Room 213, P.O. Box 7865, Madison, WI 53707-7865, telephone (608) 242-3200. The completed forms and supporting documentation shall be mailed to the Disaster Resources Section Supervisor, Wisconsin Emergency Management, 2400 Wright Street, Room 213, P.O. Box 7865, Madison, WI 53707-7865. Application materials may also be accessed from the Wisconsin Emergency Management webpage at: <http://emergencymanagement.wi.gov/>

Note: Within six months of enactment of the administrative rules, Wisconsin Emergency Management will develop an administrative manual that details the implementation process and provides specific information on program eligibility. Until such time as the manual is developed, Wisconsin Emergency Management will adhere to the eligibility criteria outlined for Categories A, B, and C of FEMA's Public Assistance Program contained in the FEMA Public Assistance Guidance Document.

(2) A county, on behalf of eligible local units of government units within the county, shall provide the administrator with written notice of intent, DMA form XXX (x/2006), to apply within 30 days of the major catastrophe. A late notice of intent shall be cause for the denial of the application.

(3) Within 60 days after the end of the incident period of the major disaster, an application shall be submitted by the county to the administrator. A complete application under this chapter shall include the following:

A completed DMA Form XXX (x/2006), signed by the county emergency management director containing the following information:

(a) The cause, the location of damage, a list of the affected local units of government within the county, and the incident period of the major catastrophe.

(b) Documentation of a local, county or state disaster declaration in response to the major catastrophe.

(c) A description of damages and the amount of eligible costs incurred by the eligible local governmental units.

(d) A statement or evidence that the local governmental unit has matching funds to cover at least 30% of the total of eligible costs incurred from the major catastrophe.

(e) Any other information that the administrator considers relevant.

(4) The administrator shall review the application and supporting documentation for completeness and may return

the application with a request for more detailed information. The administrator may consult with local public officials to ensure the application reflects the extent and magnitude of the damages and to reconcile any differences. The application is not complete until the administrator receives all requested information.

(5) An application returned to the applicant with a request for more detailed information or for correction of deficiencies must be resubmitted within 30 days from receipt by applicant. The failure of the applicant to provide in a timely manner the requested information without a reasonable explanation shall be cause for denial of the application.

(6) For purposes of this section, an application and supporting documentation is deemed complete when the administrator determines the application fully complies with the requirements under this chapter. When the application is complete, a notice will be provided to the applicant of the administrator's receipt and acceptance of the application.

(7) If the administrator determines that a review of the application and supporting documentation cannot be completed because the records, documents and other evidence were not maintained in accordance with generally accepted accounting principles and practices consistently applied, or were for any reason inadequate to demonstrate the reasonableness of the eligible costs claimed, the administrator may reject the application or make adjustments, if possible. Further consideration of such amounts will depend on the adequacy of subsequent documentation submitted by the applicant. Any additional information requested by the administrator must be resubmitted by the applicant within 30 days from receipt unless specifically extended by the administrator. The failure of the applicant to provide in a timely manner the requested information without a reasonable explanation shall be cause for denial of the application.

(8) The administrator shall take no longer than 30 days from the time the application is deemed complete in which to approve or deny the application. Applications that are approved shall be paid in accordance with section 7.06 of this chapter. A letter of denial shall be sent upon decision by the administrator that the application is denied.

(9) If the application is approved, the administrator will notify eligible local governmental units of the steps necessary to obtain payment or reimbursement for eligible costs as specified in 7.05 (1), including submission of invoices or other documentation substantiating the costs to be reimbursed.

**7.05 ELIGIBLE AND INELIGIBLE COSTS.** (1) **ELIGIBLE COSTS.** Costs eligible for payment under this chapter are those arising from a major catastrophe that are a direct result of response or recovery operations for the declared major catastrophe during the incident period and the applicant is responsible for providing response and recovery operations in the major catastrophe.

(a) Eligible costs shall include, but are not limited to: as follows:

1. Debris removal to include woody debris, building wreckage, dirt, gravel, vehicles and other disaster related materials.

2. Emergency protective measures to eliminate or reduce immediate threats to life, public health or safety or a hazard that threatens significant damage to improved public or private property.

3. Damages to roads and bridges to include surfaces, bases, shoulders, ditches, drainage structures, piers, girders, abutments, slope protection and approaches.

(2) **INELIGIBLE COSTS.** Those costs which the administrator determines are not of such severity and

magnitude that effective response and payment are beyond the capabilities of the affected local governmental units.

(a) Ineligible costs include, but are not limited to:

1. Damages to water control facilities including dams, reservoirs, levees, drainage channels, shore protective devices, irrigation facilities and pumping facilities.

2. Damages to buildings and equipment.

3. Damages to utilities including power generation facilities, sewage collection systems and water treatment plants.

4. Ordinary operating expenses of local governmental units, such as salaries and expenses of public officials that are not directly related to the application.

5. Costs for which payment has been, or will be, received from any other funding source.

6. Disaster-related costs which should be covered and compensated by insurance.

**7.06 PAYMENTS OF MAJOR DISASTER ASSISTANCE APPLICATIONS. (1) GENERAL PROVISIONS.** (a) The state share of the damages and eligible costs incurred by local governmental units shall not be greater than 70% of the eligible disaster costs.

(b) In any quarter of the state fiscal year, the department may not make payments to applicants in excess of 25% of the total amounts allocated in s. 20.465. (3) (b) and (s), Stats.

(c) If major disaster assistance application payments requested during a quarter exceed 25% of the total amounts allocated in s. 20.465. (3) (b) and (s), Stats., all accepted applications will be paid proportionately.

(d) During the last quarter of the state fiscal year, the department shall proportionately allocate and pay the balance, if any, remaining in the appropriations created in s. 20.465. (3) (b) and (s), Stats. among all the applications submitted during the fiscal year with unpaid eligible costs.

**(2) MATCH REQUIREMENTS.** (a) The local share of damages and eligible costs incurred by local governmental units may not be less than 30%.

(b) The substantiated value of donated materials, equipment, services and labor may be used as all or part of the local share of the eligible costs subject to all of the following:

1. All sources of local share donation shall be indicated when the application and supporting documentation is submitted.

2. The maximum value of donated, non-professional labor shall be equal to the prevailing federal minimum wage requirements.

3. The value of donated equipment may not exceed the Wisconsin department of transportation highway rates equipment.

4. The value of donated materials and professional services shall conform to market rates and be established by invoice.

**(3) AUDIT.** (a) The applicant shall account for all funds received and paid under this chapter in conformance with generally accepted accounting principles and practices. The applicant shall maintain detailed records of expenditures to show that fund payments were used for the purpose for which the payment was made. The applicant shall keep all financial records, including all invoices and canceled checks or bank statements that support all eligible costs claimed by the applicant, and the records shall be available for inspection by the department for 5 years after the final payment.

(b) The department may audit all of the applicant's records pertaining to this application. The department's audit may result in an adjustment in the payment amount.

**(4) PAYMENT.** The applicant shall submit to the administrator claims for payment of actual and eligible costs on forms provided by the department. All eligible costs claimed for payment shall be documented and shall be consistent with the eligibility provisions of this chapter.

**(5) FINAL INSPECTION.** Upon completion of all work by an applicant, the division shall inspect all the work that the applicant claims. The applicant shall provide the division employees with access to all claimed work and shall permit review of all records relating to the work.

**(6) CLOSEOUT OF APPLICATION.** (a) The administrator shall close out the applicant's major disaster assistance application when all of the following occurs:

1. The recovery work is complete.

2. The division completes a final inspection of all work claimed for reimbursement by the applicant.

3. The division pays eligible costs.

4. The required audits are complete.

5. The applicant receives the final amount due or pays any amount owed.

**7.07 EXPEDITED CLAIM AND PAYMENT PROCESS.** (1) If the major catastrophe places an undue burden or hardship on the local governmental unit and public officials wish to expedite the application and payment process, the local governmental unit shall submit an expedited request for payment on DMA Form XXX (x/2006) with required documentation that shall include a statement explaining why expedited payment of the application is necessary and the specific hardship posed.

(2) All requests for an advance of funds shall be signed by the applicant's authorized representative and forwarded to the administrator. The administrator shall assess a request for an advance to determine whether the request is reasonable and for eligible costs that have been completed. The administrator shall grant a request for an advance for work not completed only if an applicant has demonstrated that the work cannot be completed without an advance. The amount of an advance will be based upon eligible costs to date and the estimated eligible costs for the next 60-day period.

**7.08 RECORD RETENTION.**

The applicant shall maintain for five years all records relating to the application submitted in accordance with the State's standard audit practices and shall make the records available for inspection and audit. If a contract or subcontract for the furnishing of goods, equipment, labor, materials, or services to the applicant may result in a claim, the applicant shall include in the contract or subcontract a provision that all books, accounts, reports, and other records relating to the contract or subcontract shall be subject to inspection and audit by the state for five years after completion of the contract or subcontract.

**7.09 FUND EXPENDITURE LIMITATION.**

Expenditures from the major disaster assistance fund, as a result of a catastrophic disaster, shall not exceed the amount authorized in the major disaster assistance appropriations created in s. 20.465. (3) (b) and (s), Stats. An expenditure payment cap of 25% of the total amounts allocated in s. 20.465. (3) (b) and (s), Stats., shall be set quarterly by the department and balances shall be reconciled at the end of the state fiscal year.

**7.10 DUAL PAYMENT.**

If eligible costs are subsequently recovered from other sources after payment from the major disaster assistance fund, the applicant shall return the recovered eligible costs to the department for deposit back into the fund. If the administrator or an applicant determines that the applicant received

duplicate funds for a claim from the state and from another source, the applicant shall refund the amount received from the state.

#### 7.11 APPEAL PROCESS.

(1) Applicant shall have 30 days after receipt of the final determination by the administrator in which to file a written appeal.

(2) The applicant shall first appeal directly to the administrator.

(3) Following an appeal to the administrator, an applicant may then request a problem resolution process in which the adjutant general of the department of military affairs reviews the materials submitted by the applicant and issues a decision based on those materials or meets with the parties to negotiate an acceptable resolution of the problem.

(4) An applicant may request an administrative hearing under Ch. 227 Stats.

## Notice of Hearings Emergency Management [CR 06-091]

NOTICE IS HEREBY GIVEN that pursuant to the authority in ss. 166.03 (2) (a) 3., 227.11 (2) (a), Stats. and interpreting s. 166.03 (2) (a) 3., Stats., the Division of Emergency Management will hold public hearings at the times and places indicated below to consider the creation of ch. WEM 8, relating to the establishment of standards for the adoption of the Mutual Aid Box Alarm System, also known as MABAS, that may be used for the systematic deployment of fire, rescue and emergency medical services personnel and equipment in a multi-jurisdictional or multi-agency emergency response. The public hearings will be held as follows:

<b>Date</b>	<b>Location</b>	<b>Begin Time</b>
Mon. Aug. 14	<b>Milwaukee Area</b> Milwaukee County Sheriff's Training Academy Lecture Hall A & B, 9225 S. 68th St, Franklin, WI 53132	11:00 a.m.
Mon. Aug. 14	<b>Appleton Area</b> Grand Chute Town Hall Board Room 1900 Grand Chute Blvd. Appleton WI 54913	7:30 p.m.
Tues. Aug. 15	<b>Madison</b> Emergency Operations Center (EOC) Department of Military Affairs 2400 Wright Street Madison WI 53707	11:00 a.m.
Tues. Aug. 15	<b>LaCrosse</b> Health and Human Services Building Auditorium 300 4 <sup>th</sup> Street North LaCrosse WI 54601	7:30 p.m.
Wed. Aug. 16	<b>Wausau Area</b> Rib Mountain Town Hall, 3700 North Mountain Road Rib Mountain, WI 54401	7:30 p.m.
Thur. Aug. 17	<b>Rice Lake Area</b> Barron County Justice Center Emergency Operations Center 1420 State Hwy 25 N Barron WI 54812	7:30 p.m.

Interested persons are invited to present information at the hearing. Persons appearing may make an oral presentation but are urged to submit facts, opinions and arguments in writing as well. Facts, opinions and arguments may also be submitted in writing without a personal appearance by mail address to Keith Tveit, Fire Services Coordinator, Wisconsin Emergency Management; 2400 Wright Street, Room 213, P.O. Box 7865, Madison, WI 53708-7865. Telephone: (608) 242-3200. Email: keith.tveit@dma.state.wi.us. Written comments must be received by August 17, 2006 to be included in the record of rule making proceedings.

The hearing sites are fully accessible to persons with disabilities.

### **Analysis prepared by the Division of Emergency Management**

Proposed WEM 8

The Wisconsin Department of Military Affairs, through its Division of Emergency Management, proposes an order to create WEM 8 relating to the establishment of standards for the adoption of the Mutual Aid Box Alarm System, also known as MABAS, that may be used for deploying fire, rescue and emergency medical services personnel and equipment in a multi-jurisdictional or multi-agency emergency response.

Statutory Authority: ss. 166.03 (2) (a) 3., 227.11 (2) (a), Stats.

Statutes Interpreted: s. 166.03 (2) (a) 3, Stats.

Explanation of Agency Authority: The Department of Military Affairs, through its Division of Emergency Management, is required under s. 166.03 (2) (a) 3., Stats. (created by 2005 Wisconsin Act 257) to promulgate and adopt rules establishing the Mutual Aid Box Alarm System as a standard for deploying fire, rescue and emergency medical services personnel and equipment in the event of a multi-jurisdictional or multi-agency emergency response.

Related Rule of Statute: There are no other related statutes or rules other than those listed above.

Plain language analysis: Chapter WEM 8 establishes standards adopting the Mutual Aid Box Alarm System as a mechanism for the systematic deployment of fire, rescue and emergency medical services personnel and equipment during multi-jurisdictional or multi-agency emergency response to crises, natural disasters and manmade catastrophes. This administrative rule delineates the various levels of response and provides a procedure and systematic plan for the provision of mutual aid as resources are exhausted at the various levels of response. The rule establishes uniform compliance requirements for the types and classes of emergency response equipment and apparatus as well as minimum training requirements for emergency response personnel. Participation in the Mutual Aid Box Alarm System by local units of government is strictly voluntary. Equipment, personnel and services provided are at no cost to the stricken unit of government but may be recoverable from third parties and responsible parties. Fire, rescue and emergency medical services personnel providing mutual aid remain the employees of the aiding unit of government.

Summary of, and comparison with, existing or proposed federal regulations: The Department is unaware of any proposed or existing federal regulation that is covered by the proposed rule.

Comparison with rules in adjacent states: The State of Illinois has utilized the Mutual Aid Box Alarm System since the late 1960's as an effective mechanism for providing mutual aid among municipalities and fire departments. This system was formally adopted by the State of Illinois and enacted under the "Intergovernmental Cooperation Act" at 5 ILCS 220/1 *et. seq.*

Summary of factual data and analytical methodologies: There were no factual data or analytical methodologies used to develop the proposed rules.

Effect of small business: The proposed rules will have no significant effect on small business, as defined in s. 227.114 (1), Stats. There were no supporting documents used to determine the effect on small business and an economic impact report was not prepared.

Fiscal Estimate: These rules implement the standards adopting the Mutual Aid Box Alarm System as enacted by 2005 Wisconsin Act 257. These rules do not appear to have any impact on local government costs.

Agency contact person: Keith Tveit, Fire Services Coordinator, Wisconsin Emergency Management; 2400 Wright Street, Room 213, P.O. Box 7865, Madison, WI 53708-7865. Telephone: (608) 220-6049. Email: keith.tveit@dma.state.wi.us.

Place where comments are to be submitted and deadline for submission: Comments may be submitted to Keith Tveit, Fire Services Coordinator, Wisconsin Emergency Management; 2400 Wright Street, Room 213, P.O. Box 7865, Madison, WI 53708-7865. Telephone: (608) 220-6049. Email:

keith.tveit@dma.state.wi.us. Comments must be received on or before August 17, 2006 to be included in the record of rule-making proceedings.

SECTION 1. Chapter WEM 8 is created to read:

Chapter WEM 8

MUTUAL AID BOX ALARM SYSTEM  
STANDARDS AND PROCEDURES

WEM 8.01 Purpose

WEM 8.02 Definitions

WEM 8.03 Levels of Response

WEM 8.04 Procedure for Providing Mutual Aid

WEM 8.05 Types and Classing of Resources

WEM 8.06 Coordinators

WEM 8.07 Credentialing

WEM 8.08 Limitations on Coverage

WEM 8.09 Compensation

WEM 8.10 Participation

WEM 8.01 PURPOSE. The purpose of this chapter is to establish standards for the adoption of the Mutual Aid Box Alarm System, also known as MABAS, as a mechanism to be used for mutual aid for fire, rescue, and emergency medical services and associated special operational services as required in ss. 166.03 (2) (a) 3, Stats.

WEM 8.02 DEFINITIONS. In this chapter:

(1) "Aiding unit" means a member unit furnishing equipment, personnel or services to a stricken unit.

(2) "Apparatus guidelines" means apparatus defined and incorporated into the Mutual Aid Box Alarm System General Operating Procedures.

(3) "Chief officer" means the highest ranking officer within a fire, rescue or emergency medical services unit.

(4) "Emergency" means an occurrence or condition in a member unit's territorial jurisdiction which results in a situation of such magnitude or consequence that it cannot be adequately handled by the resources of the stricken unit and such that a member unit determines the necessity and advisability of requesting mutual aid.

(5) "Emergency medical services system" means the method for establishing a system for the appropriate management for the medical treatment and transport of the public in pre-hospital, interfacility or from facilities or institutions providing health services under s. TRANS Chapter 309 and ss. HFS Chapters 110 through 113.

(6) "Incident command system" has the same meaning as in s. COMM 30.01(16) and follows the guidelines of the National Incident Management System, also known as NIMS.

(7) "MABAS, or 'Mutual Aid Box Alarm System' box card" means a printed form containing details of departments, specialized personnel and equipment to respond to a given geographical area, target hazard and/or specialized response within a community.

(8) "MABAS, or 'Mutual Aid Box Alarm System' division" means the geographically associated MABAS member units which have been grouped for operational efficiency and representation of those MABAS member units.

Each MABAS division shall designate one representative to serve on the statewide MABAS executive board.

(9) "MABAS or 'Mutual Aid Box Alarm System' interdivisional card" means a MABAS box card designated for interdivisional mutual aid, listing a MABAS division's equipment available to respond based on the type of equipment and location.

(10) "MABAS or 'Mutual Aid Box Alarm System' member unit" means a unit of local government including but

not limited to a city, village, town, emergency medical services district or fire protection district having a fire department recognized by the State of Wisconsin or an intergovernmental agency and the units of which the intergovernmental agency is comprised which is a party to the MABAS agreement and has been appropriately authorized by the governing body to enter into such an agreement.

(11) "MABAS or 'Mutual Aid Box Alarm System' region" means the Wisconsin emergency management areas as identified by the Adjutant General under ss. 166.03 (2) 6. (b) 1., Stats.

(12) "Mutual Aid Box Alarm System", also known as MABAS, means a definite and prearranged plan whereby response and assistance is provided to a stricken unit by the aiding unit in accordance with the system established and maintained by MABAS member units and amended from time to time. Management oversight of the system is handled by the MABAS executive board.

(13) "National Incident Management System" or "NIMS," means a system mandated by Homeland Security Presidential Directive 5 that provides a consistent nationwide approach for federal, state, local and tribal governments; the private sector, and nongovernmental organizations to work effectively and efficiently together to prepare for, respond to, and recover from domestic incidents, regardless of cause, size, or complexity.

(14) "Stricken unit" means a member unit which requests aid in the event of an emergency.

(15) "WEM or 'Wisconsin emergency management' duty officer" means an individual on-call 24 hours and seven days a week and as identified by Wisconsin emergency management's duty officer roster.

**WEM 8.03 LEVELS OF RESPONSE.** MABAS coordinates the effective and efficient provision of mutual aid during emergencies, natural disasters, or manmade catastrophes. In recognition of home rule, MABAS is not intended to relieve a community from their responsibilities of providing adequate emergency services for all local emergencies, since all communities should have their own first line of defense. When a community exhausts its resources, MABAS can be activated by the stricken community through a systematic plan at various levels of response:

(1) A "local response" is an emergency that is a routine day-to-day event utilizing resources listed on a MABAS box card with a minimum of three MABAS alarm levels which is triggered locally by the incident commander on scene.

(2) A "regional response" is an emergency that has exhausted "local response" capabilities and may utilize up to three MABAS interdivisional cards. A regional response is triggered locally by the incident commander on the scene of an emergency.

(3) A "state response" is an emergency that has exhausted "regional response" capabilities and may utilize multiple MABAS interdivisional cards. A state response is triggered by a request to the WEM duty officer by the incident commander on the scene of the emergency. Responding resources will be coordinated by the WEM duty officer in coordination with the regional MABAS division coordinator.

(4) A "national response" is an emergency that has exhausted state resources and is an event of national significant which is triggered by or to the Wisconsin emergency management duty officer through the Emergency Management Assistance Compact under ss. 166.30, Stats.

**WEM 8.04 PROCEDURE FOR PROVIDING MUTUAL AID.** (1) The MABAS member units authorize their

respective chief officer or designee to take necessary and proper action to render or request mutual aid from the member units in accordance with the policies and procedures established and maintained by the MABAS member units. The aid rendered shall be to the extent of available personnel and equipment not required for adequate protection of the territorial limits of the aiding unit.

(2) Whenever an emergency occurs and conditions are such that the incident commander, or designee, of the stricken unit determines it is advisable to request aid under MABAS, shall activate the number of aiding units deemed necessary in accordance with the policy and procedures established and maintained by the MABAS member units.

(3) The chief officer, or designee, of the aiding unit shall take the following action immediately upon being requested for mutual aid:

a. Determine what equipment, personnel and/or services are requested according to the system maintained by MABAS.

b. Determine if requested equipment, personnel and/or services can be committed in response to the request from the stricken unit.

c. Dispatch the predetermined requested equipment, personnel and/or services, to the extent available, to the staging location of the emergency reported by the stricken unit in accordance with the procedure of MABAS.

d. Notify the stricken unit if any or all of the requested equipment, personnel and/or services cannot be provided.

**WEM 8.05 TYPES AND CLASSES OF RESOURCES.** All equipment and apparatus provided to the stricken unit shall be compliant with requirements based on National Fire Protection Association standards and s. TRANS 309 at the time of its original construction and shall fall within one of the NIMS vehicle classifications. At the local response level, staffing guidelines shall be based upon the current local policy and practices. At the regional response level, state response level and national response level, personnel provided by aiding units shall comply with all MABAS staffing guideline minimums.

**WEM 8.06 COORDINATORS.** Each MABAS division shall have one division coordinator available at all times. Each MABAS region shall designate one division in their region to act as the regional coordinator. Each WEM region will have one designated MABAS division as a Wisconsin emergency management regional coordinator.

**WEM 8.07 CREDENTIALING.** All firefighters responding under MABAS shall meet the training standards and requirements of entry level firefighter trained under s. COMM 30.07. Emergency medical services responders shall have a valid emergency medical services license as defined in s. HFS 110 through 113.

**WEM 8.08 LIMITATIONS ON COVERAGE.** (1) Personnel dispatched to aid a stricken unit under MABAS shall remain employees of the aiding unit. Personnel rendering aid shall report for direction and assignment at the scene of the emergency to the incident commander or designee of the stricken unit. The aiding unit shall at all times have the right to withdraw any and all aid upon the order of its chief officer or designee, provided that the aiding unit withdrawing such aid shall notify the incident commander of the stricken unit of the withdrawal of such aid and the extend of such withdrawal.

(2) The rendering of assistance under MABAS shall not be mandatory. Aiding units may refuse if local conditions of the aiding unit prohibit response. It is the responsibility of the aiding unit to immediately notify the stricken unit of its inability to respond.

WEM 8.09 COMPENSATION. Equipment, personnel or services provided under MABAS shall be at no charge to the stricken unit. However, any expenses recoverable from third parties and responsible parties shall be equitably distributed among aiding units. Nothing shall operate to bar any recovery of funds from any state or federal agency under existing state and federal laws.

WEM 8.10 PARTICIPATION. Participating agencies in the statewide mutual aid plan must be either a MABAS member unit or have signed a memorandum of understanding directly with MABAS. Failure to do either does not jeopardize WEM duty officer directed responses to a non-participating community.

SECTION 2. EFFECTIVE DATE. This rule shall take effect on the first day of the month following publication in the Wisconsin administrative register as provided in s. 227.22 (2) (intro), Stats.

## Notice of Hearing Regulation and Licensing [CR 06-096]

NOTICE IS HEREBY GIVEN that pursuant to authority vested in the Department of Regulation and Licensing in s. 227.11 (2), Stats., and subchapter XII of ch. 440, Stats., as created by 2005 Wisconsin Act 292, and interpreting subchapter XII of ch. 440, Stats., the Department of Regulation and Licensing will hold a public hearing at the time and place indicated below to consider an order to create chs. RL 180 to 183 and Appendix I, relating to the issuance and renewal of licenses, the issuance of temporary permits, standards of practice and grounds for discipline of licensed midwives.

### Hearing Date, Time and Location

**Date:** August 14, 2006  
**Time:** 9:00 a.m.  
**Location:** 1400 East Washington Avenue  
 Room 121A (Enter at 55 N. Dickinson St.)  
 Madison, Wisconsin

### Appearances at the Hearing:

Interested persons are invited to present information at the hearing. Persons appearing may make an oral presentation but are urged to submit facts, opinions and argument in writing as well. Facts, opinions and argument may also be submitted in writing without a personal appearance by mail addressed to Pamela Haack, Paralegal, Department of Regulation and Licensing, 1400 East Washington Avenue, Room 152, P.O. Box 8935, Madison, Wisconsin 53708-8935, or by email at [pamela.haack@drl.state.wi.us](mailto:pamela.haack@drl.state.wi.us). Comments must be received on or before August 14, 2006 to be included in the record of rule-making proceedings.

### Analysis

Statutes interpreted: Subchapter XII of ch. 440, Stats.

Statutory authority: Section 227.11 (2), Stats., and Subchapter XII of ch. 440, Stats., as created by 2005 Wisconsin Act 292.

Explanation of agency authority: Subchapter XII of ch. 440, Stats., was enacted on April 10, 2006. Under subch. XII of ch. 440, Stats., the Department of Regulation and Licensing is authorized to promulgate rules relating to the issuance and renewal of licenses; the issuance of temporary permits; standards of practice, and grounds for discipline of a licensed midwife.

Related statute or rule: Section 441.15, Stats., which relates to the licensure of nurse-midwives.

Plain language analysis: Chapter RL 180 is being created to include definitions of several terms that are used in subch. XII of ch. 440, Stats., and in chs. RL 180 to 183. The proposed rules include definitions for administer, consultation, department, direct supervision, health care provider, licensed midwife, practice of midwifery and temporary permit.

Chapter RL 181 is being created to identify the requirements and procedures for submitting applications for licenses and renewal of licenses and applications for temporary permits.

Chapter RL 182 is being created to identify the standards of practice of midwifery. The standards of practice established by the National Association of Certified Professional Midwives are set forth in Appendix I. The proposed rules also include standards relating to informed consent, treatment measures and prohibited practices.

Chapter RL 183 is being created to identify the grounds for discipline of a licensed midwife.

Summary of, and comparison with, existing or federal regulation:

There are no federal laws that govern the licensing of midwives.

Comparison with rules in adjacent states:

Minnesota:

Minnesota licenses traditional midwives. A review of the applicable Minnesota statutes reflects that Minnesota has many requirements that are similar to the requirements for licensure and practice in Wisconsin. Several differences found in the Minnesota statutes include a requirement that licensees complete 30 hours of continuing education every 3 years; a requirement that licensees develop a medical consultation plan, and recordkeeping and reporting requirements.

Michigan:

Michigan does not currently have licensing requirements for certified professional midwives.

Illinois:

Illinois does not currently have licensing requirements for certified professional midwives.

Iowa:

Iowa does not currently have licensing requirements for certified professional midwives.

Summary of factual data and analytical methodologies:

The Department of Regulation and Licensing proposes to promulgate administrative rules relating to the regulation of licensed midwives pursuant to the provisions of 2005 Wisconsin Act 292. The provisions under the Act establish the requirements for obtaining licensure and state that practice rules promulgated shall be consistent with the standards of practice of midwifery established by the National Association of Certified Professional Midwives (NACPM). Drug administration and procedures defined under the rules were written in accordance with NACPM's recommendations. For guidance on the development of the administrative rules, the department has appointed an advisory committee in accordance with the provisions under s. 440.987, Stats.

Analysis and supporting documents used to determine effect on small business or in preparation of economic impact report:

The department proposes that the proposed rules will have minor or non-significant effect on small business as it does only initiate regulation on those currently practicing

midwifery in the state of Wisconsin, though does so in consistence with the provisions of 2005 Wisconsin Act 292 and the department's charter in maintaining the protection of the public. The rules as written should not have a major or significant economic impact as they do not increase the standards for those already certified by the National Association of Certified Professional Midwives (NACPM).

2005 Wisconsin Act 292, which initiated promulgation of rules regulating licensed midwives, does not substantially increase existing standards for obtaining the midwife license, those standards being (primarily) a preexisting valid certification as a certified professional midwife or a valid nurse-midwife credential granted by the American College of Nurse-Midwives. Furthermore, the rules promulgated only restrict practice of midwifery to the standards established by NACPM. Any additional restrictions established must be in accordance with those standards, and may not go against certain provisions under the statutes that may constitute a threat to their practice, which includes a prohibition on establishing the following requirements: a nursing degree; a midwife to practice under supervision or collaboration with a health care provider; a midwife to enter into an agreement with another health care provider; limit the location of where a midwife may practice; permit a midwife to use forceps or vacuum extraction.

Finally, the rules promulgated will regulate approximately 35 people, at least initially, who are currently practicing in Wisconsin under the aforementioned certifications. Additional costs on their practice will be the cost of licensure, or renewal, which is \$56/biennium.

Section 227.137, Stats., requires an "agency" to prepare an economic impact report before submitting the proposed rule-making order to the Wisconsin Legislative Council. The Department of Regulation and Licensing is not included as an "agency" in this section.

#### **Fiscal Estimate**

The Department estimates that this rule will require staff time in the Divisions of Management Services, Professional Credentialing, and Enforcement. The one-time salary and fringe costs in the Division of Management Services and Professional Credentialing are estimated at \$2,300. The on-going salary and fringe cost in the Division of Enforcement is estimated at \$19,800.

Anticipated costs incurred by private sector:

The department finds that this rule has no significant fiscal effect on the private sector.

Effect on small business:

These proposed rules will have no significant economic impact on small businesses, as defined in s. 227.114 (1), Stats. The Department's Regulatory Review Coordinator may be contacted by email at [larry.martin@drl.state.wi.us](mailto:larry.martin@drl.state.wi.us), or by calling (608) 266-8608.

#### **Agency Contact Person**

Pamela Haack, Paralegal, Department of Regulation and Licensing, Office of Legal Counsel, 1400 East Washington Avenue, Room 152, P.O. Box 8935, Madison, Wisconsin 53708-8935. Telephone (608) 266-0495. Email: [pamela.haack@drl.state.wi.us](mailto:pamela.haack@drl.state.wi.us).

Place where comments are to be submitted and deadline for submission:

Comments may be submitted to Pamela Haack, Paralegal, Department of Regulation and Licensing, Office of Legal Counsel, 1400 East Washington Avenue, Room 152, P.O. Box 8935, Madison, Wisconsin 53708-8935; email

[pamela.haack@drl.state.wi.us](mailto:pamela.haack@drl.state.wi.us). Comments must be received on or before August 14, 2006, to be included in the record of rule-making proceedings.

## **Notice of Hearing Revenue [CR 06-063]**

Notice is hereby given that, pursuant to s. 71.80 (1) (c), Stats., and interpreting ss. 71.04 (4), (4m), (5) (intro.), (6) (intro.), (7) (d), (df), and (dh), (8) (b), (8) (c) and (10) and 71.25 (6), (6m), (7) (intro.), (8) (intro.), (9) (d), (df) and (dh), (10) (c), (11) and (14), Stats., the Department of Revenue will hold a public hearing at the time and place indicated below, to consider the repeal, renumbering and amending, amending, and repeal and recreation of rules relating to apportionment of apportionable income.

#### **Hearing Information**

The hearing will be held at 9:00 a.m. on **Monday, August 14, 2006**, in the Events Room (1st floor) of the State Revenue Building, located at 2135 Rimrock Road, Madison, Wisconsin.

Handicap access is available at the hearing location.

#### **Comments on the Rule**

Interested persons are invited to appear at the hearing and may make an oral presentation. It is requested that written comments reflecting the oral presentation be given to the department at the hearing. Written comments may also be submitted to the contact person shown below no later than August 21, 2006, and will be given the same consideration as testimony presented at the hearing.

#### **Contact Person(s)**

Small Businesses:	Others:
Tom Ourada	Dale Kleven
Department of Revenue	Department of Revenue
Mail Stop 624-A	Mail Stop 6-40
2135 Rimrock Road	2135 Rimrock Road
P.O. Box 8933	P.O. Box 8933
Madison WI 53708-8933	Madison WI 53708-8933
Telephone (608) 266-8875	Telephone (608) 266-8253
E-mail: <a href="mailto:tourada@dor.state.wi.us">tourada@dor.state.wi.us</a> , <a href="mailto:dkleven@dor.state.wi.us">dkleven@dor.state.wi.us</a>	

The Wisconsin Department of Revenue proposes an order to: repeal s. Tax 2.39 (6) (b) 4. b. and (7); renumber and amend s. Tax 2.39 (6) (b) 4. c.; amend s. Tax 2.39 (1), (2) (a), (b), and (e), and (6) (a) and (b) 4. a.; and repeal and recreate s. Tax 2.39 (3) and (6) (c); relating to the computation of the apportionment fraction of multistate businesses.

#### **Analysis by the Department of Revenue**

Statutes interpreted: ss. 71.04 (4), (4m), (5) (intro.), (6) (intro.), (7) (d), (df), and (dh), (8) (b), (8) (c), and (10) and 71.25 (6), (6m), (7) (intro.), (8) (intro.), (9) (d), (df), and (dh), (10) (c), (11), and (14), Stats.

Statutory authority: s. 71.80 (1) (c), Stats.

Explanation of agency authority: Under s. 71.80 (1) (c), Stats., the department may make such regulations as it shall deem necessary in order to carry out chapter 71 of the Wisconsin Statutes, relating to income and franchise taxes.

Related statute or rule: ss. 71.04 (4), (4m), (5) (intro.), (6) (intro.), (7) (d), (df), and (dh), (8) (b), (8) (c), and (10) and 71.25 (6), (6m), (7) (intro.), (8) (intro.), (9) (d), (df), and (dh), (10) (c), (11), and (14), Stats.

Plain language analysis: This proposed rule order prescribes the method to be used for apportioning the apportionable income of multistate businesses.

Section 1. Tax 2.39 (1) is amended to clarify that the apportionment formula applies only to apportionable income and to conform language, style, and format to Legislative Council Rules Clearinghouse standards.

Tax 2.39 (2) (a), (b), and (e) are amended to conform language, style, and format to Legislative Council Rules Clearinghouse standards.

Section 2. Tax 2.39 (3) is repealed and recreated to do all of the following:

a. Reflect the phase-in of an apportionment formula consisting solely of a sales factor, as provided by 2003 Wisconsin Act 37.

b. Prescribe the weight to be given to the other apportionment factors for taxable years beginning before January 1, 2008, if a factor is omitted.

c. Reflect the computation of the sales factor if the numerator or denominator of the factor is a positive number, zero, or a negative number, as provided by 2003 Wisconsin Act 37.

d. List specialized industries that are not subject to the standard apportionment formula, as provided by 2003 Wisconsin Act 37.

Section 3. Tax 2.39 (6) (a) is amended to conform language, style, and format to Legislative Council Rules Clearinghouse standards.

Sections 4, 5, and 6. Tax 2.39 (6) (b) 4. a. is amended to remove obsolete language. Tax 2.39 (6) (b) 4. b. is repealed because it is no longer needed. Tax 2.39 (6) (b) 4. c. is renumbered Tax 2.39 (6) (b) 4. b. and amended to remove obsolete language.

Section 7. Tax 2.39 (6) (c) is repealed and recreated to do all of the following:

a. Change the way that receipts from the use of computer software and from services are attributed to Wisconsin, as prescribed in 2005 Wisconsin Act 25, effective for taxable years beginning on or after January 1, 2005.

b. Clarify when receipts from the lease, rental, licensing, or other use of tangible personal property are attributed to Wisconsin.

c. Add a note about the Wisconsin Tax Appeals Commission's decision in *The Hearst Corporation vs. Wisconsin Department of Revenue*, Docket No. I-8511, May 15, 1990. The commission decided that the income-producing activity with respect to certain income from broadcasting network programming and national advertising occurred in Wisconsin.

Section 8. Tax 2.39 (7) is repealed because it is obsolete. The treatment of partnerships was revised by 2001 Wisconsin Act 16, which amended s. 71.22 (1r) and created s. 71.25 (15), Stats., effective for taxable years of partnership partners or limited liability company members beginning on or after January 1, 2001.

Summary of, and comparison with, existing or proposed federal regulation: There is no existing or proposed federal regulation that is intended to address the activities to be regulated by the rule.

#### **Comparison with rules in adjacent states:**

– Illinois' apportionment formula consists solely of a sales factor. Sales of tangible personal property are sourced on a destination basis. If the taxpayer is not subject to tax in the destination state, a throwback rule applies. Generally, sales of

services are attributed to the state where the income-producing activity occurred. If the income-producing activity occurred in more than one state, the sale is attributed to the state with the greater costs of performance. Gross receipts from the sale, lease, rental, or licensing of real property are attributable to Illinois if the property is located in Illinois. Gross receipts from the rental, lease, or licensing of tangible personal property are attributable to Illinois if the property is located in Illinois, or based on the ratio of the time the property was used in Illinois to the total time the property was used everywhere. Gross receipts from services are attributable to Illinois based on the ratio of the time spent performing the services in Illinois to the total time spent performing services everywhere.

– Iowa's apportionment formula consists solely of a sales factor. Sales of tangible personal property are sourced on a destination basis. If the taxpayer is not subject to tax in the destination state, a throwout rule applies. Sales of services are sourced where the benefit of the service is received. Gross receipts from rents, royalties, or other fees received for the use of real property are attributable to Iowa if the property is located in Iowa. Gross receipts from rents, royalties, license fees, or other fees received for the use of tangible personal property are attributable to Iowa if the property is located in Iowa, or based on the ratio of the time the property was used in Iowa to the total time the property was used everywhere. Royalty income from intangible property is attributable to Iowa if the taxpayer's commercial domicile is in Iowa.

– Michigan's apportionment formula for 2006 consists of a three-factor formula with sales weighted 92.5%, and property and payroll each weighted 3.75%. Sales of tangible personal property are sourced on a destination basis. Michigan does not have a throwback rule. Sales of services are sourced where the income-producing activity occurred. If the income-producing activity occurred in more than one state, the sale is attributed to the state with the greater costs of performance.

– Minnesota's apportionment formula consists of a three-factor formula with sales weighted 75%, and property and payroll each weighted 12.5%. Sales of tangible personal property are sourced on a destination basis. Minnesota does not have a throwback rule. Sales, rents, royalties, or other income received in connection with real property are attributable to Minnesota if the property is located in Minnesota. Receipts from the lease or rental of tangible personal property are attributable to Minnesota if the property is located in Minnesota, or based on the extent to which the property was used in Minnesota. Royalties or other income from intangible property is attributable to Minnesota based on the portion of use in the state. If the portion of use in and outside Minnesota cannot be determined, the sales are excluded from the numerator and denominator of the sales factor. Sales of services are sourced where the benefit of the service is received, where the service was ordered, or where the service was billed, depending on the circumstances.

– Summary of factual data and analytical methodologies: 2003 Wisconsin Act 37 changed the apportionment formula used by multistate businesses for determining the income taxable by Wisconsin. As a result of this legislation, single sales factor apportionment will be phased in for most businesses. The phase-in of single sales factor apportionment begins for taxable years beginning on January 1, 2006. 2005 Wisconsin Act 25 changed how gross receipts from the use of computer software and from services are sourced for purposes of the apportionment formula. Receipts from the use of computer software are sourced to the location where the software is used. Receipts from services are sourced where the benefit of the service is received. The change in the sourcing rules first applies to taxable years beginning on January 1,

2005. 2001 Wisconsin Act 16 created ss. 71.22 (1r) and 71.25 (15), Stats., effective for taxable years beginning on or after January 1, 2001. These provisions specify that a general or limited partner's share of a partnership's apportionment factors are included in the numerator and denominator of the partner's apportionment factors. Similar treatment applies to members of limited liability companies that are treated as partnerships. The department has determined that it is necessary to revise s. Tax 2.39 to reflect these law changes.

Analysis and supporting documents used to determine effect on small business: The department has determined that there is not a significant fiscal effect on small business. This proposed rule order will only apply to large, multistate companies that are required to determine their Wisconsin income using the apportionment method. Therefore, this proposed rule order does not have a significant effect on small business.

Anticipated costs incurred by private sector: This rule order does not have a significant fiscal effect on the private sector.

Effect on small business: This rule order does not have a significant fiscal effect on small business.

#### Agency contact person

Please contact Dale Kleven at (608) 266-8253 or [dkleven@dor.state.wi.us](mailto:dkleven@dor.state.wi.us), if you have any questions regarding this rule order.

Place where comments are to be submitted and deadline for submission: Comments may be submitted to the contact person shown below no later than one week after the public hearing on this proposed rule order is conducted. Information as to the place, date, and time of the public hearing will be published in the Wisconsin Administrative Register.

Dale Kleven  
Department of Revenue  
Mail Stop 6-40  
2135 Rimrock Road  
P.O. Box 8933  
Madison, WI 53708-8933

SECTION 1. Tax 2.39 (1) and (2) (a), (b), and (e) are amended to read:

Tax 2.39 (1) GENERAL. Except as provided in sub. (3) (a), any person, except resident individuals, resident estates, and resident trusts, engaged in business both within and without Wisconsin in and outside this state shall report by apportion its apportionable income using the statutory apportionment method as provided in s. 71.04 (4) or 71.25 (6), Stats., when the person's business in Wisconsin this state is an integral part of a unitary business unless the department, in writing, allows reporting on a different basis. Nonapportionable income shall be allocated as provided in s. 71.25 (5) (b), Stats.

(2) (a) "Apportionable income" has the meaning given in s. 71.25 (5) (a), Stats.

(2) (b) "Engaged in business within and without Wisconsin in and outside this state" means having business activity which is sufficient to create nexus in Wisconsin this state and at least one other state or foreign country.

(2) (e) "Nonapportionable income" has the meaning given in s. 71.25 (5) (b), Stats.

SECTION 2. Tax 2.39 (3) is repealed and recreated to read:

(3) APPORTIONMENT FRACTION. (a) 1. For taxable years beginning before January 1, 2006, persons engaged in business in and outside this state, except direct air carriers, financial organizations, telecommunications companies, pipeline companies, public utilities, railroads, and sleeping

car companies, as defined in ss. 71.04 (8) (a) and (b) 1. and 71.25 (10) (a) and (b) 1., Stats., and corporations that are authorized to use an alternative method of apportionment under s. 71.25 (14), Stats., shall use an apportionment fraction as described in s. 71.04 (4) (a) or 71.25 (6) (a), Stats. Property, payroll, or sales related to the production of nonapportionable income may not be included in either the numerator or the denominator of any of the apportionment factors.

2. If one of the factors described in subd. 1. is omitted pursuant to s. 71.04 (10) or 71.25 (11), Stats., the percentages of the fraction represented by the remaining factors shall be adjusted as follows:

a. If either the property factor or payroll factor is omitted, the other factor shall represent 33.3333 percent of the fraction and the sales factor shall represent 66.6667 percent of the fraction.

b. If the sales factor is omitted, the property factor and the payroll factor shall each represent 50 percent of the fraction.

3. If either the numerator or the denominator of the sales factor is zero or a negative number, the sales factor shall be determined as described in s. 71.04 (4m) (a) 1., (b) 1., or (c) 1. or 71.25 (6m) (a) 1., (b) 1., or (c) 1., Stats.

(b) 1. For taxable years beginning after December 31, 2005, and before January 1, 2007, persons engaged in business in and outside this state, except direct air carriers, financial organizations, telecommunications companies, pipeline companies, public utilities, railroads, and sleeping car companies, as defined in ss. 71.04 (8) (a) and (b) 2. and 71.25 (10) (a) and (b) 2., Stats., and corporations that are authorized to use an alternative method of apportionment under s. 71.25 (14), Stats., shall use an apportionment fraction as described in s. 71.04 (4) (b) or 71.25 (6) (b), Stats. Property, payroll, or sales related to the production of nonapportionable income may not be included in either the numerator or the denominator of any of the apportionment factors.

2. If one of the factors described in subd. 1. is omitted pursuant to s. 71.04 (10) or 71.25 (11), Stats., the percentages of the fraction represented by the remaining factors shall be adjusted as follows:

a. If either the property factor or payroll factor is omitted, the other factor shall represent 25 percent of the fraction and the sales factor shall represent 75 percent of the fraction.

b. If the sales factor is omitted, the property factor and the payroll factor shall each represent 50 percent of the fraction.

3. If either the numerator or the denominator of the sales factor is zero or a negative number, the sales factor shall be determined as described in s. 71.04 (4m) (a) 1., (b) 1., or (c) 1. or 71.25 (6m) (a) 1., (b) 1., or (c) 1., Stats.

(c) 1. For taxable years beginning after December 31, 2006, and before January 1, 2008, persons engaged in business in and outside this state, except direct air carriers, financial organizations, telecommunications companies, pipeline companies, public utilities, railroads, and sleeping car companies, as defined in ss. 71.04 (8) (a) and (b) 2. and 71.25 (10) (a) and (b) 2., Stats., and corporations that are authorized to use an alternative method of apportionment under s. 71.25 (14), Stats., shall use an apportionment fraction as described in s. 71.04 (4) (c) or 71.25 (6) (c), Stats. Property, payroll, or sales related to the production of nonapportionable income may not be included in either the numerator or the denominator of any of the apportionment factors.

2. If one of the factors described in subd. 1. is omitted pursuant to s. 71.04 (10) or 71.25 (11), Stats., the percentages of the fraction represented by the remaining factors shall be adjusted as follows:

a. If either the property factor or payroll factor is omitted, the other factor shall represent 11.1111 percent of the fraction

and the sales factor shall represent 88.8889 percent of the fraction.

b. If the sales factor is omitted, the property factor and the payroll factor shall each represent 50 percent of the fraction. 3. If either the numerator or the denominator of the sales factor is zero or a negative number, the sales factor shall be determined as described in s. 71.04 (4m) (a) 1., (b) 1., or (c) 1. or 71.25 (6m) (a) 1., (b) 1., or (c) 1., Stats.

(d) For taxable years beginning after December 31, 2007, persons engaged in business in and outside this state, except direct air carriers, financial organizations, telecommunications companies, pipeline companies, public utilities, railroads, and sleeping car companies, as defined in ss. 71.04 (8) (a) and (b) 2. and 71.25 (10) (a) and (b) 2., Stats., and corporations that are authorized to use an alternative method of apportionment under s. 71.25 (14), Stats., shall use an apportionment fraction as described in s. 71.04 (4) (d) or 71.25 (6) (d), Stats. Sales related to the production of nonapportionable income may not be included in either the numerator or the denominator of the sales factor. If either the numerator or the denominator of the sales factor is zero or a negative number, the sales factor shall be determined as described in ss. 71.04 (4m) (a) 2., (b) 2., or (c) 2. or 71.25 (6m) (a) 2., (b) 2., or (c) 2., Stats.

Note: See ss. Tax 2.46, 2.47, 2.475, 2.48, 2.49, 2.495, 2.50, 2.502, and 2.505 for special apportionment fractions of interstate direct air carriers, motor carriers, railroads, sleeping car companies, pipelines, financial institutions, broker-dealers, investment advisers, investment companies, underwriters, public utilities, telecommunications companies, and professional sports clubs.

(e) The apportionment method may be used only if the taxpayer is engaged in business both in Wisconsin and at least one other state or foreign country and its business in Wisconsin is an integral part of a unitary business.

Note: Refer to ss. 71.04 (4) and 71.25 (6), Stats., as amended by 2003 Wis. Act 37.

Note: See s. Tax 2.395 for an alternative method of apportioning the income of certain corporations.

SECTION 3. Tax 2.39 (6) (a) is amended to read:

(6) SALES FACTOR. (a) Numerator; denominator. The numerator of the sales factor shall include the taxpayer's gross receipts from sales which that are in Wisconsin in the production of apportionable income; this state and the denominator shall include all the taxpayer's gross receipts from sales in the production of apportionable income everywhere during the taxable year. Gross receipts that are not derived in the production of apportionable income and items described in ss. 71.04 (7) (f) and 71.25 (9) (f), Stats., may not be included in the sales factor.

SECTION 4. Tax 2.39 (6) (b) 4. a. is amended to read:

Tax 2.39 (6) (b) 4. a. For the taxable years beginning on or after January 1, 1989, gross receipts from the sales of tangible personal property are in Wisconsin if the property is shipped from an office, store, warehouse, factory or other place of storage in Wisconsin and delivered to the federal government, including its agencies and instrumentalities, in Wisconsin regardless of the f.o.b. point or other conditions of sale. For purposes of this section, only sales for which the federal government makes direct payment to the seller pursuant to the terms of its contract constitute sales to the federal government. Thus, sales by a subcontractor to the prime contractor, the party to the contract with the federal government, do not constitute sales to the federal government.

SECTION 5. Tax 2.39 (6) (b) 4. b. is repealed.

SECTION 6. Tax 2.39 (6) (b) 4. c. is renumbered Tax 2.39 (6) (b) 4. b. and amended to read:

Tax 2.39 (6) (b) 4. b. For taxable years beginning on or after January 1, 1990, gross receipts from the sales of tangible personal property are in Wisconsin if the property is shipped from an office, store, warehouse, factory or other place of storage in Wisconsin and delivered to the federal government, including its agencies and instrumentalities, outside Wisconsin and the taxpayer does not have nexus in the destination state. The amount included in the numerator of the sales factor shall be 50 percent of the sale.

Note to Revisor: Remove the note at the end of Tax 2.39 (6) (b) 4. b. as renumbered.

SECTION 7. Tax 2.39 (6) (c) is repealed and recreated to read:

(c) Sales other than sales of tangible personal property attributable to Wisconsin. 1. Except as provided in ss. 71.04 (7) (df) and (dh) and 71.25 (9) (df) and (dh), Stats., gross receipts from transactions other than sales of tangible personal property shall be included in the numerator of the sales factor if the income producing activity which gave rise to the receipts is performed wholly within this state during the taxable year. If the income producing activity is performed partly in and partly outside this state during the taxable year, receipts shall be assigned to this state based upon the ratio of direct costs of performance in this state to the direct costs of performance in all states having jurisdiction to tax the business during the taxable year.

2. For purposes of this paragraph, "income producing activity" means the act or acts engaged in by the taxpayer for the ultimate purpose of obtaining gains or profit.

3. For purposes of this paragraph, "costs of performance" means direct costs determined in a manner consistent with generally accepted accounting principles and in accordance with accepted conditions or practices in the trade or business of the taxpayer.

4. The numerator of the sales factor includes gross receipts from the sale, lease, rental, licensing, or other use of real property owned by the taxpayer if the real property is located in this state and gross receipts from the sublease of real property if the real property is located in this state.

5. Except as described in subd. 6., the numerator of the sales factor includes gross receipts from the lease, rental, licensing, or other use of tangible personal property owned by the taxpayer and the sublease of tangible personal property if the property is located in this state during the entire period of lease, rental, licensing, sublease, or other use. If the property is used in and outside this state during the period of lease, rental, licensing, or sublease, gross receipts are included in the numerator of the sales factor to the extent that the property is used in this state. The proportion of use in this state is determined by multiplying the gross receipts from the lease, rental, licensing, sublease, or other use of the property by a fraction having as a numerator the number of days the property is in this state while leased, rented, licensed, or subleased in the taxable year and having as a denominator the total number of days that the property is leased, rented, licensed, or subleased in all states having jurisdiction to tax the taxpayer during the taxable year.

6. Gross receipts from the lease, rental, or licensing of moving property, including motor vehicles, rolling stock, aircraft, vessels, or mobile equipment, owned by the taxpayer and the sublease of moving property are included in the numerator of the sales factor to the extent that the property is used in this state. The proportion of use of moving property in this state is determined as follows:

a. The proportion of use of a motor vehicle or rolling stock in this state is determined by multiplying the gross receipts from the lease, rental, licensing, or sublease of the motor vehicle or rolling stock by a fraction having as a numerator the number of miles traveled within this state by the motor vehicle or rolling stock while leased, rented, licensed, or subleased in the taxable year and having as a denominator the total number of miles traveled by the motor vehicle or rolling stock while leased, rented, licensed, or subleased in the taxable year.

b. The proportion of use of an aircraft in this state is determined by multiplying the gross receipts from the lease, rental, licensing, or sublease of the aircraft by a fraction having as a numerator the number of takeoffs and landings of the aircraft in this state while leased, rented, licensed, or subleased in the taxable year and having as a denominator the total number of takeoffs and landings of the aircraft while leased, rented, licensed, or subleased in the taxable year.

c. The proportion of a vessel or mobile equipment in this state is determined by multiplying the gross receipts from the lease, rental, licensing, or sublease of the vessel or mobile equipment by a fraction having as a numerator the number of days that the vessel or mobile equipment is in this state while leased, rented, licensed, or subleased in the taxable year and having as a denominator the total number of days that the vessel or mobile equipment is leased, rented, licensed, or subleased in the taxable year.

d. If the taxpayer is unable to determine the use of moving property under subdivision paragraphs a., b., or c. while the property is leased, rented, licensed, or subleased in the taxable year, the moving property is conclusively deemed to be used in the state in which the property is located at the time that the lessee, licensee, or sublessee takes possession of the property.

7. The numerator of the sales factor includes gross receipts from the sale, licensing the use of, or other use of intangible property, including, but not limited to, patents, copyrights, trademarks, trade names, service names, franchises, licenses, plans, specifications, blueprints, processes, techniques, formulas, designs, layouts, patterns, drawings, manuals, technical know-how, contracts, and customer lists, if the income producing activity occurs in this state during the taxable year. If the income producing activity occurs in and outside this state, the gross receipts shall be allocated between those states having jurisdiction to tax the taxpayer based on the direct costs of performance. For purposes of this subdivision, intangible property excludes securities.

Note to Revisor: Insert the following notes at the end of Tax 2.39 (6) (c) 7. as repealed and recreated:

Note: Refer to ss. 71.04 (7) (d), (df), and (dh) and 71.25 (9) (d), (df), and (dh), Stats., as affected by 2005 Wis. Act 25.

Note: In *The Hearst Corporation vs. Wisconsin Department of Revenue*, Wisconsin Tax Appeals Commission, Docket No. I-8511 (May 15, 1990), the taxpayer received income from the television network for broadcasting network programming in Wisconsin and income from the sale of national advertising time. The Commission held that the network income is a result of the income producing activity of broadcasting the network programming in Wisconsin and is includable in full in the numerator of the sales factor. The national advertising income is a result of the income producing activity of broadcasting in Wisconsin and the income is includable in full in the sales factor numerator.

8. The provisions of this paragraph shall also apply to sales, other than sales of tangible personal property, to the federal government.

SECTION 8. Tax 2.39 (7) is repealed.

Note to Revisor: Replace the note at the end of Tax 2.39 with the following:

Note: Section Tax 2.39 interprets ss. 71.04 (4), (4m), (5), (6), (7), (10), and (11) and 71.25 (5), (6), (6m), (7), (8), (9), (11), and (15), Stats.

Note: The provisions of s. Tax 2.39 first apply for taxable years beginning on January 1, 2005.

The rules contained in this order shall take effect on the first day of the month following publication in the Wisconsin administrative register as provided in s. 227.22(2)(intro.), Stats.

### Initial Regulatory Flexibility Analysis

This proposed rule order does not have a significant economic impact on a substantial number of small businesses.

## Notice of Hearing Revenue [CR 06-087]

Notice is hereby given that, pursuant to s. 895.59 (2), Stats., and interpreting s. 895.59, Stats., the Department of Revenue will hold a public hearing at the time and place indicated below, to consider the creation of rules relating to the discretion that the department will follow in the enforcement of rules and guidelines as they apply to a small business.

### Hearing Information

The hearing will be held at 12:00 P.M. on Monday, **August 14, 2006**, in the Events Room (1<sup>st</sup> floor) of the State Revenue Building, located at 2135 Rimrock Road, Madison, Wisconsin.

Handicap access is available at the hearing location.

### Analysis by the Department of Revenue

Statute interpreted: s. 895.59, Stats.

Statutory authority: s. 895.59 (2), Stats.

Explanation of agency authority: Each agency shall promulgate a rule that requires the agency to disclose in advance the discretion that the agency will follow in the enforcement of rules and guidelines against a small business.

Related statute or rule: s. 895.59, Stats.

Plain language analysis: This proposed rule order discloses that the enforcement of rules or guidelines as they apply to a small business shall be done on a case-by-case basis. Each case shall be determined on its merits as evaluated by the department, taking into consideration all relevant factors. Factors may include, but are not limited to:

History of compliance with the rule or guideline.

The extent to which the rule or guideline allows for discretion in its enforcement.

Voluntary disclosure.

Summary of, and comparison with, existing or proposed federal regulation: The department is not aware of any existing or proposed federal regulation that is intended to address the activities to be regulated by the rule.

Comparison with rules in adjacent states: The department is not aware of a similar rule in an adjacent state.

Summary of factual data and analytical methodologies: 2003 Wisconsin Act 145 created s. 895.59 (2), Stats., which sets forth a requirement that each agency shall promulgate a rule that requires the agency to disclose in advance the discretion that the agency will follow in the enforcement of

rules and guidelines against a small business. In response to this statutory requirement, the department has created this proposed rule order.

Analysis and supporting documents used to determine effect on small business: This proposed rule order describes existing department policy. It makes no policy or other changes having a significant effect on small business.

Anticipated costs incurred by private sector: This proposed rule order does not have a significant fiscal effect on the private sector.

Effect on small business: This proposed rule order does not have a significant effect on small business.

Agency contact person: Please contact Dale Kleven at (608) 266-8253 or [dkleven@dor.state.wi.us](mailto:dkleven@dor.state.wi.us), if you have any questions regarding this proposed rule order.

Place where comments are to be submitted and deadline for submission: Comments may be submitted to the contact person shown below no later than one week after the public hearing on this proposed rule order is conducted. Information as to the place, date, and time of the public hearing will be published in the Wisconsin Administrative Register.

Dale Kleven  
Department of Revenue  
Mail Stop 6-40  
2135 Rimrock Road  
P.O. Box 8933  
Madison, WI 53708-8933

SECTION 1. Tax 1.15 is created to read:

Tax 1.15 Enforcement of rules and guidelines as they apply to a small business. (1) PURPOSE. This section discloses the discretion that the department will follow in the enforcement of rules and guidelines as they apply to a small business.

(2) DEFINITION OF SMALL BUSINESS. In this section, "small business" has the meaning given in s. 227.114 (1), Stats., but does not include an entity defined in s. 48.685 (1) (b) or 50.065 (1) (c), Stats.

(3) DISCRETION THE DEPARTMENT WILL FOLLOW. The enforcement of rules or guidelines as they apply to a small business, including the reduction or waiver of penalties for a voluntary disclosure of actual or potential violations of rules or guidelines, shall be done on a case-by-case basis. Each case shall be determined on its merits as evaluated by the department, taking into consideration all relevant factors. Factors may include, but are not limited to:

- (a) History of compliance with the rule or guideline.
- (b) The extent to which the rule or guideline allows for discretion in its enforcement.
- (c) Voluntary disclosure.

(4) VOLUNTARY DISCLOSURE. The department encourages a small business that is not in compliance with Wisconsin tax law to voluntarily come forward. On a case-by-case basis, considering all relevant factors, the department may exercise discretion to:

- (a) Enter into a written agreement with the small business that restricts the statute of limitations.
- (b) Waive penalties.
- (c) Reduce the number of periods for which returns shall be filed.

**Note:** Section Tax 1.15 interprets s. 895.59, Stats.

The rules contained in this order shall take effect on the first day of the month following publication in the Wisconsin

administrative register as provided in s. 227.22 (2) (intro.), Stats.

### Initial Regulatory Flexibility Analysis

This proposed rule order does not have a significant economic impact on a substantial number of small businesses.

### Comments on the Rule

Interested persons are invited to appear at the hearing and may make an oral presentation. It is requested that written comments reflecting the oral presentation be given to the department at the hearing. Written comments may also be submitted to the contact person shown below no later than August 21, 2006, and will be given the same consideration as testimony presented at the hearing.

### Contact Person(s)

Small Businesses:	Others:
Tom Ourada	Dale Kleven
Department of Revenue	Department of Revenue
Mail Stop 624-A	Mail Stop 6-40
2135 Rimrock Road	2135 Rimrock Road
P.O. Box 8933	P.O. Box 8933
Madison WI 53708-8933	Madison WI 53708-8933
Telephone (608) 266-8875	Telephone (608) 266-8253
E-mail: <a href="mailto:tourada@dor.state.wi.us">tourada@dor.state.wi.us</a> <a href="mailto:dkleven@dor.state.wi.us">dkleven@dor.state.wi.us</a>	

## Notice of Hearing

### Transportation

[CR 06-089]

NOTICE IS HEREBY GIVEN that pursuant to Subchapter VI, ch. 343, Stats., and interpreting Subchapter VI, ch. 343, Stats., the Department of Transportation will hold a public hearing in Room 254 of the Hill Farms State Transportation Building, 4802 Sheboygan Avenue, Madison, Wisconsin on the **14th day of August, 2006**, at 1:00 PM, to consider the amendment of ch. Trans 105, Wisconsin Administrative Code, relating to licensing of driver schools and instructors.

An interpreter for the hearing impaired will be available on request for this hearing. Please make reservations for a hearing interpreter at least 10 days prior to the hearing.

### Analysis Prepared by the Wisconsin Department of Transportation

Statutes interpreted: Subchapter VI, ch. 343, Stats.

Statutory authority: Subchapter VI, ch. 343, Stats.

Explanation of agency authority: The Department licenses driver training schools and instructors that teach driver's education for a fee. High schools or technical colleges that teach driver's education as part of their regular school program and businesses that provide instruction in the operation of motorcycles are excluded.

Related statute or rule: ss. 343.60 to 343.72, Stats., and ch. Trans 105.

Plain language analysis: The purpose of this rule making is to amend ch. Trans 105 to comply with 2005 Wisconsin Act 397. This new law made many substantial changes to the driver schools statutes. Some of the changes include:

Eliminating the requirement that schools maintain permanently bound books for recordkeeping.

Implementing a system of progressive enforcement to take action against driver schools or instructors that have violated

the law or have compiled multiple substantiated consumer complaints.

Allowing driver schools to participate in the Cooperative Driver Testing Program, which allows schools to administer the knowledge and signs tests to their own students under the age of 18.

Requiring driver schools to file a bond with the Department, and maintain a liability insurance policy in the amount established by rule.

Summary of, and preliminary comparison with, existing or proposed federal regulation: None.

Comparison with Rules in the Following States:

Michigan, Iowa, Minnesota, and Illinois have rules relating driver schools, driver school instructors and course content for young drivers to complete driver's education prior to licensure. The rules are similar to this proposed rule.

Summary of factual data and analytical methodologies used and how the related findings support the regulatory approach chosen: A telephone survey was conducted of a sample of driver schools currently conducting business. Responses were compiled, and are shown below. There are approximately 180 driver training schools statewide. Analysis and supporting documentation used to determine effect on small businesses:

#### **Fiscal impacts**

1. New bonding requirement will cost approximately \$200 per year. Vehicle inspections will increase costs slightly.

2. The new bonding requirement will increase costs, but not substantially. The bond will likely be added to the school's current insurance policy.

3. The new bonding requirement will increase costs. The total amount of the increase is unknown, although the bond will likely be added to an existing insurance policy.

#### **Workload impacts**

1. Some of the changes in ch. Trans 105 will decrease workload, such as removing the requirement that records be kept in a permanently bound book, and lengthening the renewal cycle to two years. The workload reduction will be offset by other changes, such as additional workload required to participate in the Cooperative Driver Testing Program.

2. No workload impact.

3. No change in workload expected. May have a slight decrease.

Other comments:

1. This will make driver schools operated in the State of Wisconsin more professional, and the changes are welcome.

2. Allowing driver schools to participate in the Cooperative Driver Testing Program is a positive for both students and schools. The changes made in the proposed rule are good. Schools that are in compliance that run a quality business will not have a problem.

3. Driver schools must be allowed to operate home-based offices to remain in business. (Note: the proposed rulemaking still allows driver schools to have home-based offices).

Effect on small business: Most driver schools are small businesses, and are already regulated by the Department. This rule making changes how the Department regulates driver schools. The Department's Regulatory Review Coordinator may be contacted by e-mail at [andrew.ruiz@dot.state.wi.us](mailto:andrew.ruiz@dot.state.wi.us), or by calling (414) 438-4585.

Fiscal effect and anticipated costs incurred by private sector: The Department estimates that there will be no fiscal impact on the liabilities or revenues of any county, city,

village, town, school district, vocational, technical and adult education district, sewerage district, or federally-recognized tribes or bands. The Department estimates that there will be no fiscal impact on state revenues or liabilities. The private sector should not see an increase in costs. Allowing students to take the knowledge and signs test at the driving school, instead of DMV, should decrease travel costs and time away from work for parents.

Agency contact person and place where comments are to be submitted and deadline for submission: The public record on this proposed rule making will be held open until close of business August 15, 2006 to permit the submission of comments in lieu of public hearing testimony or comments supplementing testimony offered at the hearing. Any such comments should be submitted to Erin Egan, Department of Transportation, Division of Motor Vehicles, Room 255, P. O. Box 7911, Madison, WI 53707-7911. You may also contact Ms. Egan by phone at (608) 266-1449.

To view the proposed amendments to the rule, view the current rule, and submit written comments via e-mail/internet, you may visit the following website: <http://www.dot.wisconsin.gov/library/research/law/rulenotices.htm>.

## **Notice of Hearing Workforce Development [CR 06-095]**

NOTICE IS HEREBY GIVEN that pursuant to Sections 49.137 (4m) and 227.11 (2), Stats., the Department of Workforce Development proposes to hold a public hearing to consider rules relating to grants supporting community child care initiatives.

#### **Hearing Information**

Wednesday, August 16, 2006, 1:30 p.m.

G.E.F. 1 Building

201 E. Washington Avenue

Madison, WI

Interested persons are invited to appear at the hearings and will be afforded the opportunity to make an oral presentation of their positions. Persons making oral presentations are requested to submit their facts, views, and suggested rewording in writing.

Visitors to the GEF 1 building are requested to enter through the left East Washington Avenue door and register with the customer service desk. The entrance is accessible via a ramp from the corner of Webster Street and East Washington Avenue. If you have special needs or circumstances regarding communication or accessibility at the hearing, please call (608) 267-9403 at least 10 days prior to the hearing date. Accommodations such as ASL interpreters, English translators, or materials in audiotape format will be made available on request to the fullest extent possible.

#### **Analysis Prepared by the Department of Workforce Development**

Statutory authority: Note: Complaint forms are available from the Department of Regulation and Licensing, Division of Enforcement, 1400 East Washington Avenue, P.O. Box 8935, Madison, Wisconsin 53708, or from the department's website at: <http://drl.wi.gov>.

Statutes interpreted: Section 49.137 (4m), Stats.

Related statutes and rules: 42 USC 9858 to 9858q and 45 CFR Part 98

Explanation of agency authority. Section 49.137 (4m), Stats., provides that the department shall award grants to local

governments and tribal governing bodies for programs to improve the quality of child care. The department shall promulgate rules to administer the grant program, including rules that specify the eligibility criteria and procedures for awarding grants. Section 49.137 (4m) refers to the program as the local pass-through grant program.

The local pass-through grant program is funded by the federal Child Care and Development Fund (CCDF), a federal block grant that makes federal child care funding available to states that contribute the required match at the state's federal medical assistance percentage rate. The local pass-through program began in 1999 to bring CCDF funds into the state that had been left unmatched in the state budget. Through the local pass-through program, the department awards grants supporting community child care initiatives to all local governments and tribes that supply the match required to bring the CCDF funds into the state.

Summary of the proposed rules. In recent years, funding for grants supporting community child care initiatives has been cut by 86%. This reduced funding necessitates a change in the procedure for awarding the grants. Under the current rule, former initial grantees may receive continuing grants in the 2 following funding cycles of up to 75% of the amount of their initial grants and then may also compete, along with any eligible jurisdiction in the state, for the remaining 25% of funding as initial grantees. The proposed rule will allow all grants in some years to be awarded as initial grants and all grants in other years to be awarded as continuing grants.

Offering only initial grants in some funding cycles and only continuing grants in other cycles will provide for equitable grant making over time while not requiring an overly complicated procedure for awarding the program's limited funding. Availability of initial grants gives new applicants the opportunity to apply for funding. Availability of continuing grants is important to local governments and tribes because they need to know that they will be able to receive funding for more than one year before they go through the effort and expense of starting a new program. Continuing grants support local governments and tribes that have shown an interest in receiving the grants, have the match on hand, and have the demand of grant-funded activities. There are currently 48 grantees representing approximately 86 local jurisdictions.

Offering both continuing grants and initial grants each year creates workload issues for both local governments and tribes and for the department. Local governments and tribes may receive funding through both the continuing and initial grant process and this causes duplicated work at the state and local level. Offering both initial and continuing grants each year creates workload issues for the department due to the effort in publicizing and promoting a statewide open RFP for initial grants, recalculating the fair share funding available for each county, and recalculating the proportions for each grantee within the fair share funding.

The current rule provides that a continuing grant may be offered for 2 funding cycles following the award of the initial grant. The proposed rule will allow a continuing grant for up to 3 funding cycles. This will allow more flexibility in managing the program. In addition, the current rule provides that continuing grants may be offered in an amount up to 75% of the amount of the initial grant. The proposed rule will allow a continuing grant in an amount up to 200% of the initial grant. The increase to 200% is proposed to avoid a mandatory RFP for initial grants if there is only a small amount of funding left

to award. If the pass-through program received funding at a significantly higher level, the department could offer an RFP for initial grants to allow local governments and tribes to apply when they may not have considered the lower funding levels to be worthwhile.

The proposed rule will also:

Amend the authority of the department to round the level of required match from the nearest higher full percentage point to the nearest higher percentage that can be expressed in whole dollars relative to the amount of the grant.

Repeal descriptions of single, cooperative, and collaborative applications. This level of detail is more appropriate for the RFP.

Repeal the subsection that provides for different percentages of the grant that may be spent on administrative costs based on the different types of applications and creates a provision that allows the department to limit the amount of funding that may be spent on administrative costs to a level no higher than 15%.

Make minor language changes to clarify and simplify the rule.

Summary of factual data and analytical methodologies. The proposed rule is intended to simplify the procedures for applying for grants and awarding of grants due to the significantly reduced funding for the program.

Comparison with federal law. The statewide limit on administrative costs for a CCDF grant is 5%. The other issues in the proposed rules are not addressed in federal law.

Comparison with rules in adjacent states. None of the adjacent states have a comparable program.

Effect on small businesses. The proposed rules do not affect small businesses. The Department's Small Business Regulatory Coordinator is Jennifer Jirschele, (608) 266-1023, [jennifer.jirschele@dwd.state.wi.us](mailto:jennifer.jirschele@dwd.state.wi.us).

Agency contact person and place where comments are to be submitted. The proposed rules and the fiscal estimate are available at the web site <http://adminrules.wisconsin.gov>. This site allows you to view documents associated with this rule's promulgation, register to receive email notification whenever the Department posts new information about this rulemaking order, and submit comments and view comments by others during the public comment period. The proposed rules are also available at:

<http://www.dwd.state.wi.us/dwd/hearings.htm>.

You may receive a paper copy of the proposed rules or fiscal estimate by contacting:

Elaine Pridgen  
Office of Legal Counsel  
Dept. of Workforce Development  
P.O. Box 7946  
Madison, WI 53707-7946  
(608) 267-9403  
[elaine.pridgen@dwd.state.wi.us](mailto:elaine.pridgen@dwd.state.wi.us)

#### Written comments

Written comments on the proposed rules received at the above address, email, or through the <http://adminrules.wisconsin.gov> web site no later than August 17, 2006, will be given the same consideration as testimony presented at the hearing.

---

---

## Submittal of proposed rules to the legislature

---

---

*Please check the Bulletin of Proceedings – Administrative Rules for further information on a particular rule.*

**Agriculture, Trade and Consumer Protection**  
**(CR 05–108)**

Chs. ATCP 32 and 33, relating to fertilizer and pesticide bulk storage.

**Transportation**  
**(CR 06–064)**

Ch. Trans 102, relating to CDL exemptions.

**Barbering and Cosmetology Examining Board**  
**(CR 05–118)**

Chs. BC 1 to 6 and 8, relating to definitions, microdermabrasion, chemical skin peels, managers, ear piercing, waxing, nail enhancement, licensing requirements and reinstatement of license.

---

---

## Rule orders filed with the revisor of statutes bureau

---

---

*The following administrative rule orders have been filed with the Revisor of Statutes Bureau and are in the process of being published. The date assigned to each rule is the projected effective date. It is possible that the publication date of these rules could be changed. Contact the Revisor of Statutes Bureau at gary.poulson@legis.state.wi.us or (608) 266-7275 for updated information on the effective dates for the listed rule orders.*

**Commerce  
(CR 05-081)**

An order affecting ch. Comm 48, relating to petroleum products.  
Effective 9-1-06.

**Natural Resources  
(CR 06-013)**

An order affecting ch. NR 10, relating to deer hunting as it relates to the control and eradication of chronic wasting disease.  
Effective 9-1-06.

**Transportation  
(CR 06-036)**

An order affecting ch. Trans 510, relating to the Transportation Facilities Economic Assistance and Development (TEA) Program.  
Effective 9-1-06.

**Transportation  
(CR 06-041)**

An order affecting ch. Trans 103, relating to habitual traffic offenders.  
Effective 9-1-06.

---



---

## Rules published with this register and final regulatory flexibility analyses

---



---

*The following administrative rule orders have been adopted and published in the **July 31, 2006**, Wisconsin Administrative Register. Copies of these rules are sent to subscribers of the complete Wisconsin Administrative Code and also to the subscribers of the specific affected Code.*

*For subscription information, contact Document Sales at (608) 266-3358.*

### Commerce (CR 05-049)

An order affecting ch. Comm 3, relating to stop work, stop use and petition for variance procedures. Effective 8-1-06.

#### Summary of Final Regulatory Flexibility Analysis

Chapters 101 and 145 and section 167.10 (6m), Stats., grant the department the authority to protect health, safety and welfare and the waters of the state by establishing reasonable and effective safety standards for the construction, repair and maintenance of public buildings and places of employment. The proposed rules of Clearinghouse Rule No. 05-049 are minimum requirements to meet the directives of the statutes and any exceptions from compliance for small businesses would be contrary to the statutory objectives which are the basis for the rules.

#### Summary of Comments by Legislative Review Committees

No comments were received.

### Health and Family Services (CR 06-018)

An order affecting ch. HFS 148, relating to the chronic disease drug repository program. Effective 8-1-06.

#### Summary of Final Regulatory Flexibility Analysis

the expansion of the drug repository program to include chronic diseases drugs and supplies and amendment of the handling fee provision prescribed under s. HFS 148.08, will not have a significant economic impact on current or potential pharmacy or medical facility participants in the drug repository program, including those that meet the definition of small business under s. 227.114 (1), Stats.

#### Summary of Comments by Legislative Review Committees

No comments were received.

### Labor and Industry Review Commission (CR 05-092)

An order affecting chs. LIRC 1 to 4, relating to the rules of practice and procedure. Effective 8-1-06.

#### Summary of Final Regulatory Flexibility Analysis

There is no effect on small business.

#### Summary of Comments by Legislative Review Committees

No comments were received.

### Natural Resources (CR 05-032)

An order affecting chs. NR 590, 600, 605, 610, 615, 620, 625, 630, 631, 632, 633, 635, 636, 640, 647, 677, 656, 660, 662, 663, 664, 665, 666, 670, 675, 668, 670, 673 and 679, relating to hazardous waste management. Effective 8-1-06.

#### Summary of Final Regulatory Flexibility Analysis

The department evaluated the impacts of the revised rules and the proposed fee increases on small businesses. Department staff also testified before the Small Business Regulatory Review Board and answered questions from the board during the meeting and in follow-up correspondence. Based on our evaluation, the department determined that the revised rules and fee increases will not have a significant economic impact on a substantial number of small businesses.

#### Summary of Comments by Legislative Review Committees

The proposed rules were referred to the Senate Committee on Natural Resources and Transportation and the Assembly Committee on Natural Resources. The Senate Committee on Natural Resources and Transportation held a public hearing on January 5, 2006 and the Assembly Committee on Natural Resources held a public hearing on January 18, 2006. Both committees requested the department to consider modifications. At its March 22, 2006 meeting, the Natural Resources Board modified ch. NR 670, Appendix II to delete the addition of a fee of "\$35 for each additional vehicle" from the existing hazardous waste transportation service annual license fee.

### Natural Resources (CR 05-089)

An order affecting chs. NR 102 and 207, relating to the water quality classifications in the Lake Superior basin and the related anti-degradation procedures for WPDES permits. Effective 8-1-06.

#### Summary of Final Regulatory Flexibility Analysis

Within the outstanding resource water designations, applicants seeking permits under ch. 30, Stats., would likely not be eligible for exemptions nor for general permits. Instead individual permits may be needed. New wastewater dischargers to those areas would have to provide high levels of treatment to prevent lowering water quality. However, it is unlikely that new dischargers or ch. 30, Stats., permit applicants would be using some of these areas because of current ownership. As an example, the Apostle Island National Lakeshore is in federal ownership. Several of the river mouths are likewise properties managed by the department.

### **Summary of Comments by Legislative Review Committees**

The proposed rules were reviewed by the Senate Committee on Natural Resources and Transportation and the Assembly Committee on Natural Resources. On May 24, 2006, the Assembly Committee on Natural Resources held a public hearing. The department did not receive any comments or requests for modification as a result of this hearing.

#### **Natural Resources (CR 05-101)**

An order affecting ch. NR 20, relating to hook and line walleye, sauger and hybrids fishing in Sherman Lake, Vilas Co. Effective 8-1-06.

### **Summary of Final Regulatory Flexibility Analysis**

Small businesses in the vicinity of Sherman Lake will most likely benefit economically from the rule change. Sherman Lake will provide a fishing opportunity for anglers when other waters are closed to fishing, thus attracting anglers to the area to take advantage of this unique fishing opportunity.

### **Summary of Comments by Legislative Review Committees**

The proposed rules were reviewed by the Senate Committee on Natural Resources and Transportation and the Assembly Committee on Natural Resources. On May 24, 2006, the Assembly Committee on Natural Resources held a public hearing. The department did not receive any comments or requests for modification as a result of this hearing.

#### **Natural Resources (CR 05-115)**

An order affecting chs. NR 25 and 26, relating to allocation of lake trout and commercial fishing for lake trout in Lake Superior. Effective 8-1-06.

### **Summary of Final Regulatory Flexibility Analysis**

No additional compliance or reporting requirements will be imposed on the Lake Superior commercial fishing licensees as a result of these rule changes. There should be a positive fiscal impact due to the increase in the quotas for each license holder.

### **Summary of Comments by Legislative Review Committees**

the proposed rules were reviewed by the Senate Committee on Natural Resources and Transportation and the Assembly Committee on Natural Resources. On May 24, 2006, the Assembly Committee on Natural Resources held a public hearing. The department did not receive any comments or requests for modification as a result of this hearing.

#### **Nursing Home Administrator Examining Board (CR 06-010)**

An order affecting chs. NHA 1 to 3, relating to continuing education. Effective 8-1-06.

### **Summary of Final Regulatory Flexibility Analysis**

The proposed rule would change the specific subject matter area requirements for continuing education for nursing home administrators licensed in Wisconsin. There are 3,124 nursing home administrators licensed in Wisconsin. Of the 3,124 nursing home administrators licensed in Wisconsin, a significant percentage of them probably work in small businesses.

In order for nursing home administrators to renew their license, continuing education courses would have to be completed. Currently, to obtain credit for coursework taken at a college or university, the course work must be approved by the National Association of Boards of Examiners of Long Term Care Administrators (NAB). The rule would allow certain course work offered at a college or university to be accepted for continuing education without obtaining approval from NAB. The rule would also limit the course work taken at colleges or universities to 18 of the 24 hours required. There will be no additional reporting requirements, bookkeeping requirements, or compliance costs. This rule would merely allow certain courses to be taken without obtaining approval from NAB. The same 24 hour requirement would be in place. This rule change will not have an effect on small business.

These proposed rules will have no significant economic impact on small businesses, as defined in s. 227.114 (1), Stats. The department's Regulatory Review Coordinator may be contacted by email at larry.martin@drl.state.wi.us, or by calling (608) 266-8608.

### **Summary of Comments by Legislative Review Committees**

No comments were reported.

#### **Regulation and Licensing (CR 06-015)**

An order affecting ch. RL 87, Appendix I, relating to the 2006 edition of the Uniform Standards of Professional Appraisal Practice (USPAP). Effective 8-1-06.

### **Summary of Final Regulatory Flexibility Analysis**

These proposed rules will have no significant economic impact on small businesses, as defined in s. 227.114 (1), Stats. The department's Regulatory Review Coordinator may be contacted by email at larry.martin@drl.state.wi.us or by calling (608) 266-8608.

### **Summary of Comments by Legislative Review Committees**

No comments were received.

#### **Veterans Affairs (CR 06-020)**

An order affecting ch. VA 16, relating to the county transportation services grant program. Effective 8-1-06.

### **Summary of Final Regulatory Flexibility Analysis**

Effect on small business: none.

### **Summary of Comments by Legislative Review Committees**

No comments were received.

---



---

## Sections affected by rule revisions and corrections

---



---

The following administrative rule revisions and corrections have taken place in **July 2006**, and will be effective as indicated in the history note for each particular section. For additional information, contact the Revisor of Statutes Bureau at (608) 266-7275.

### Revisions

#### Commerce

##### **Ch. Comm 3**

- S. Comm 3.001
- S. Comm 3.002
- S. Comm 3.01
- S. Comm 3.02
- S. Comm 3.03 (1) (2) (e) and (5) (a) to (e)
- S. Comm 3.04 (2) (b) and (7)
- S. Comm 3.06 (2) (c)
- S. Comm 3.10
- S. Comm 3.11
- S. Comm 3.12
- S. Comm 3.13

#### Health and Family Services

##### **Ch. HFS 148**

- S. HFS 148.01
- S. HFS 148.02
- S. HFS 148.03 (1) to (3), (3m), (13) and (14m)
- S. HFS 148.04 (1) (2) (a) (intro.) and (b) and (3)
- S. HFS 148.05
- S. HFS 148.06 (1), (2) (a) (intro.) and (b) and (3) to (5)
- S. HFS 148.07 (2), (3) and (4) (c)
- S. HFS 148.08
- S. HFS 148.09
- S. HFS 148.11 (1) and (2) (b)

#### Labor and Industry Review Commission

##### **Ch. LIRC 1**

- S. LIRC 1.01
- S. LIRC 1.015
- S. LIRC 1.02 (intro.)
- S. LIRC 1.025
- S. LIRC 1.04
- S. LIRC 1.045

##### **Ch. LIRC 2**

- S. LIRC 2.01
- S. LIRC 2.015
- S. LIRC 2.03
- S. LIRC 2.04

##### **Ch. LIRC 3**

- S. LIRC 3.02 (1), (1m), (6) and (7)
- S. LIRC 3.03 (1) (intro.), (c), (2) and (5)

##### **Ch. LIRC 4**

- S. LIRC 4.01
- S. LIRC 4.02

#### Natural Resources

##### **Ch. NR 20**

- S. NR 20.20 (64) (h)

##### **Ch. NR 25**

- S. NR 25.06 (1) (a)
- S. NR 25.09 (1) (am) and (b)
- S. NR 25.10 (1) (b)

##### **Ch. NR 26**

- S. NR 26.23 (1)

##### **Ch. NR 102**

- S. NR 102.10 (1) (d) and (f), (1m)
- S. NR 102.12 (3)

##### **Ch. NR 207**

- S. NR 207.03 (5)

##### **Ch. NR 590**

##### **Ch. NR 600**

##### **Ch. NR 605**

##### **Ch. NR 610**

##### **Ch. NR 615**

##### **Ch. NR 620**

##### **Ch. NR 625**

##### **Ch. NR 630**

##### **Ch. NR 631**

##### **Ch. NR 632**

##### **Ch. NR 633**

##### **Ch. NR 635**

##### **Ch. NR 636**

##### **Ch. NR 640**

##### **Ch. NR 645**

##### **Ch. NR 655**

##### **Ch. NR 656**

##### **Ch. NR 660**

##### **Ch. NR 661**

##### **Ch. NR 662**

##### **Ch. NR 663**

##### **Ch. NR 664**

##### **Ch. NR 665**

##### **Ch. NR 666**

##### **Ch. NR 668**

##### **Ch. NR 670**

##### **Ch. NR 673**

##### **Ch. NR 675**

**Ch. NR 679**

S. NHA 3.02 (1), (1m), (6) and (7)

**Ch. NR 680**

S. NHA 3.03 (1), (2) and (5)

**Ch. NR 685**

**Ch. NR 690**

**Regulation and Licensing**

**Ch. RL 87**

Appendix I

**Nursing Home Administrator Examining Board**

**Ch. NHA 1**

S. NHA 1.02 (1m) and (5)

**Ch. NHA 3**

S. NHA 3.01 (1)

**Veterans Affairs**

**Ch. VA 16**

S. VA 16.01 (3) and (5)

S. VA 16.02 (1), (2) (d), (3), and (4)

**Editorial corrections**

Corrections to code sections under the authority of s. 13.93 (2m) (b), Stats., are indicated in the following listing.

**Natural Resources**

**Ch. NR 25**

S. NR 25.02 (19)

**Ch. NR 102**

S. NR 102.05 (6) (a)

---

---

## Executive orders

---

---

**The following are recent Executive Orders issued by the Governor.**

**Executive Order 157.** Relating to a proclamation that the flag of the United States and the flag of the State of Wisconsin be flown at half-staff as a mark of respect for Hospitalman 2nd class Jaime Jaenke of the United States Navy Reserve who lost his life during Operation Iraqi Freedom.

**Executive Order 158.** Relating to the creation of the office on community and faith-based partnerships.

**Executive Order 159.** Relating to a proclamation that the flag of the United States and the flag of the State of Wisconsin be flown at half-staff as a mark of respect for Sergeant Travis Van Zoest of the Army National Guard who lost his life during Operation Enduring Freedom.

**Executive Order 160.** Relating to a proclamation that the flag of the United States and the flag of the State of Wisconsin be flown at half-staff as a mark of respect for Staff Sergeant Patrick Lybert of the United States Army who lost his life during Operation Enduring Freedom.

The State of Wisconsin  
Department of Administration  
Bureau of Document Services  
Document Sales and Distribution Section  
P.O. Box 7840  
Madison, Wisconsin 53707-7840



**First Class Mail**

**Dated Material. Please Do Not Delay!**